TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1915.

No. 185.

JUAN SURIS CARDONA, APPELLANT,

vs.

FRANCISCO P. QUINONES AND EL BANCO DE PUERTO RICO.

APPEAL FROM THE SUPREME COURT OF PORTO RICO.

FILED JUNE 30, 1914.

(24,286)

1 [Stamped:] Porto Rico Supreme Court. Received Apr. 24, 1914.

In the District Court for the Judicial District of Mayaguez, Porto Rico.

No. 1560.

JUAN SURIS CARDONA, Plaintiff,
v.
FRANCISCO P. QUIÑONES, Defendant; BANCO DE PUERTO RICO, Warrantor.

Civil Action for the Recovery of Rural Property and Value of Products. Ejectment.

Judgment Roll.

Complaint.

Juan Suris Cardona, a resident of San Germán, married, of age, through the undersigned attorney, files a complaint against Francisco Placido Quiñones, resident of San Germán, married, proprietor, of age, for the recovery of a rural property and for the value of its products, and as a cause of action alleges:

I.

That José Salvador and Ramón María Suris acquired seventeen (17) parcels of land in the municipal district of San Germán in the manner and form hereinafter set forth:

A. On July 16, 1862, six (6) cuerdas and one (1) quadro situated in the ward of Sabana Eneas, by purchase from
2 José Manuel Ramírez.

B. On July 19, 1864, three (3) cuerdas, six (6) varas, in the ward of Sabana Eneas, by purchase from José Prudencio Pagán.

C. On July 20, 1865, 3.8 cuerdas, in the ward of Sabana Eneas, divided into three parts, by purchase from the sisters Norverta, María and Ramona Pagán.

D. On May 11, 1867, two (2) cuerdas in the district of Sabana Eneas, by purchase from Juan Isidro Quiñones.

E. On June 19, 1867, fourteen (14) varas of land divided into two parts, by purchase from Angel María Sepúlveda.

F. On June 19, 1867, one (1) cuerda, situated in the ward of Sabana Eneas, by purchase from Anacleto Feliciano.

G. On June 1, 1867, one (1) cuerda in the said ward of Sabana Eneas, by purchase from Geronimo Ortiz.

H. On March 26, 1868, half (½) of a cuerda in the ward of

Sabana Grande, by purchase from Juan Manuela, Dionisia and María Avilés.

I. On December 22, 1868, three (3) cuerdas in the ward of Sabana Eneas, by purchase from Francisco Jacome Pagán, resident of San Germán.

J. On April 23, 1869, five (5) and two-thirds (⅔) cuerdas in the ward of Sabana Eneas, by purchase from Ramón Nonnato Martínez.

K. On May 7, 1860, one (1) cuerda and one (1) cuadro in the ward of Sabana Eneas, by purchase from Ramona Pagán.

L. On October 10, 1860, two (2) cuerdas in the ward of Sabana Grande, by purchase from José Bernardini.

L. On October 21, 1870, half (½) of a cuerda in the ward of Sabana Eneas, or rather, one (1) cuerda in the ward of Sabana Eneas, by purchase from Ludovino and Pedro Martínez.

3 M. On October 21, 1870, half (½) cuerda in the ward of Sabana Eneas, by purchase from Ramón Ortiz.

N. On October 21, 1870, one and a half (1½) cuerdas divided into two parts, by purchase from Esteban Bartoli.

Ñ. On July 27, 1866, three (3) cuerdas in the ward of Sabana Eneas, by purchase from Juan Isidro Quiñones, as executor of Maximo Quiñones.

O. On October 26, 1866, seven (7) cuerdas in the ward of Sabana Eneas, by purchase from Dionisio Betancourt.

Titles to the foregoing lands were acquired by public deeds executed before the then notaries of San Germán, José D. Quiñones and Ramón Nazario de Figueroa.

The parcel of land specified under letter A was bounded on the north and east by the Hacienda "Cristina," and on the south by the highway leading from San Germán to Cabo Rojo.

That specified under letter B was bounded on the west and north by the said Hacienda "Cristina."

The second of the three parts of the parcel specified under letter C was bounded on the north by the Hacienda "Cristina," and the third part of the same parcel was bounded on the east by the said Hacienda "Cristina."

The parcel specified under letter D was bounded on the east by the Hacienda "Cristina," and on the south by the highway leading from San Germán to Cabo Rojo.

The parcel specified under letter F was bounded on the east and west by the Hacienda "Cristina."

The parcel specified under letter L was bounded on the south by the Hacienda "Cristina," and in all other directions by the Hacienda "Carolina."

And the first division of the parcel specified under the letter N was bounded on the south by the highway leading from San Germán to Cabo Rojo.

4 II.

The seventeen (17) parcels hereinbefore described formed one single rural property called "La Perseguida" and contained forty (40) cuerdas, being situated in the wards of Sabana Eneas and

Sabana Grande of the municipal district of San Germán, being bounded on the north by the Hacienda "Carolina"; on the south by the road leading from San Germán to Cabo Rojo; on the east by other lands belonging to the brothers Suris; and on the west by the said Hacienda "Carolina"; and in harmony with this description it was mortgaged by José Salvador and Ramón María Suris by public deed of November 26, 1870, before the notary of San Germán, José Ramón Nazario de Figueroa, in favor of the Charity Hospital of San Germán to secure the payment of an annuity of six thousand (6,000) escudos and interest at five (5) per cent per annum.

(This mortgage has now expired.)

III.

The brothers José Salvador and Ramón María Suris were both owners and proprietors in conjunction with their other brother, Epifanco Suris, of the two parcels of land described as follows:

A. Twenty (20) cuerdas in the ward of Sabana Eneas of the district of San Germán, or seven (7) hectares, eighty-six (86) ares, and seven (7) centiares; bounded on the north by cane lands belonging to Salvador Suris acquired from the Hacienda "Carolina" of José Bernardini; on the west by cane lands belonging to Pablo María Stefani and to the Succession of Rosario Sepúlveda; on the south by pasture lands belonging to the Charity Hospital; and on the east by cane lands belonging to Pablo María Stefani.

B. 34.900 cuerdas, or 3 hectares, 71 ares, and 69 centiares, in the ward of Sabana Eneas, district of San Germán, containing a stone building for the manufacture of sugar, with all the apparatus necessary for the said manufacture contained in said stone building; an old structure used by Pedro Ortiz, the remnants of an old dwelling house which has been destroyed, and a dwelling house at the entrance to the ground; bounded on the north by cane lands belonging to Santiago Sambolin, to Pablo Estefani and to the sisters Suris; on the west by pasture lands belonging to said sisters Suris and lands of a like nature belonging to the Charity Hospital; on the south by a road leading from San Germán to Cabo Rojo; and on the east by pasture lands belonging to the Succession of Geronimo Ortiz.

And the two parcels hereinbefore described were sold by the brothers José Salvador Suris, Ramón María and Epifanco Suris to Pablo María Estefani by deed executed before the San Germán notary, José Ramón Nazario de Figueroa, on January 18, 1883.

It was set out in the said deed that the parcels in question belong to the vendors in the following proportions: 14.790 cuerdas to José Salvador and Ramón María Suris by purchase from their brother Salvador by deed executed in Mayaguez on October 11, 1870, before the then notary public, Rafael Bello, which the said Salvador had inherited from his parents, Salvador Suris and Angela Marchani; 12.410 cuerdas to José Salvador Suris as a part of the lands adjudicated to him in testamentary proceedings under

the will of his parents, Salvador Suris and Angela Marchani, and 12.910 cuerdas to Ramón María Suris, to whom they were adjudicated in testamentary proceedings under the will of his parents Salvador Suris and Angela Marchani.

In said deed of bargain and sale dated January 18, 1883, it was shown that the two parcels of land sold (amounting to 54.900 cuerdas) formed a part of the then Hacienda "Cristina" now partitioned by its co-owners; a survey being taken prior to the sale together with other lands by the duly-qualified surveyor, Carlos B. Hernández; that the first parcel of land containing 20 cuerdas appears under No. 2 in the plan made by the said surveyor in March, 1882, and the second parcel of 34.900 cuerdas under No. 11 in said plan.

IV.

The brothers José Salvador and Ramón María Suris appeared before the San Germán notary, José Ramón Nazario de Figueroa, on February 15, 1882, and after exhibiting a genuine document of the title deed of the seventeen (17) parcels referred to in clause I, the said parcels were consolidated because they adjoined one another, and by reason of the said consolidation they became one single property, of which the following is a description:

"Property 'La Perseguida' with an area of forty (40) cuerdas situated in the wards of Sabana Eneas and Sabana Grande of the municipal district of San Germán; bounded on the north by
7 the Hacienda 'Carolina' belonging to Fernando Vélez Borrero; on the south by the highway leading to Cabo Rojo; on the east by other lands belonging to the brothers Suris; and on the west by the Hacienda 'Carolina.'"

After the property "Perseguida" was formed by the grouping of the said parcels it was recorded in the name of the brothers Suris and Ramón María Suris in the registry of property on March 1, 1882, on folio 20 of volume 2 of San Germán, property No. 90, entry first.

V.

Subsequently to the formation of the property "Perseguida" in the manner set forth in the previous allegation they began to be popularly known as the lands of the Charity Hospital in whose favor they were mortgaged for the reasons and to the amount expressed in the second allegation. The brothers Suris made no objection to the change of name and the said property "Perseguida" continued to be called the lands of the Charity Hospital.

VI.

In order to carry into effect the division of the lands of what is known as the Hacienda "Cristina," formerly belonging to the parents of José Salvador and Ramón María Suris and which now forms a part of the Hacienda "Imiza," a proper survey was performed by the duly-qualified surveyor, Carlos B. Hernández; as a result of which survey he made a plan in the month of March, 1882, which by

8 agreement with the contracting parties to the deed referred to under allegation III was attached to the said deed. The said plan is the one referred to under allegation III.

In the same plan there is specified under No. 3 a parcel of forty (40) cuerdas of land pertaining to the Charity Hospital; and in the said deed of January 18, 1883, executed by the brothers Suris in favor of Pablo María Estefani covering the 54.900 cuerdas referred to under allegation III, the purchaser Estefani recognizes the validity of the plan and the existence of the said forty (40) cuerdas of the Charity Hospital forming their boundaries.

VII.

By deed executed before the San Germán notary, José Ramón Nazario de Figueroa, on January 18, 1883, the sisters Cristina, Virginia, Luisa and Margarita Suris leased to Pablo María Estefani sixty-nine (69) cuerdas of land belonging to them and described in plan under No. 9, the deed showing that the said sixty-nine (69) cuerdas were bounded on one side by lands of the Charity Hospital; and in the said deed Estefani again acknowledges the existence of the lands of the Charity Hospital.

VIII.

The forty (40) cuerdas of land specified in the plan under No. 3 as belonging to the Charity Hospital never were nor are they now the property of the said hospital. This religious establishment never had nor does it now possess any land in the wards of Sabana Eneas or Sabana Grande, district of San Germán, recorded or unrecorded in the registry of property.

9 The said forty (40) cuerdas of land belonged to José Salvador and Ramón María Suris having been acquired in the manner set forth in allegation I and the undivided one-half thereof became the property of the Succession of Ramón María Suris, composed of his widow, María de la Concepción Mestre, and of their lawful children, María, Josefa, Ana Ines, Salvador and Jorge Suris y Mestre, who were declared to be his intestate heirs by a decision of the District Court of Mayaguez on April 20, 1907, and the Succession of Ramón María Suris recorded in its name the undivided one-half of the property in the Registry of San Germán, folio 24, volume 23, property No. 90, entry second.

At this time the said property of forty (40) cuerdas belongs to the plaintiff, Juan Suris, who acquired the same from José Salvador Suris and the Succession of Ramón María Suris by deeds executed before the notary of Mayaguez, Fernando Vázquez, on July 14 and 22, 1907, for the sum of five thousand five hundred dollars ($5,500), the same being recorded in his name on folio 24 over and 25 over, of volume 2 of San Germán, property No. 90, records 3 and 4, under the following description, which it still retains:

Rural property composed of forty (40) cuerdas, situated in the wards of Sabana Eneas and Sabana Grande, municipal district of San Germán, equivalent to fifteen (15) hectares, sixty-eight (68)

ares, and twenty-seven centiares; bounded on the north by the cane plantation called "Imiza"; on the south by the road leading from San Germán to Cabo Rojo, lands of Sinforoso Quiñones, and the Hacienda "Imiza"; and on the east and west by the Hacienda
10 "Imiza."

The difference between the boundaries in this description and that given under allegation IV is explained by the fact that the lands with the previous boundaries of Vélez Borrero, Suris brothers and Hacienda "Carolina" are now a part of the Hacienda "Imiza."

IX.

José Salvador and Ramón María Suris leased the said forty (40) cuerdas of land to Pablo María Estefani in the year 1883 subsequent to the month of January, and Pablo María Estefani in the year 1883 subsequent to the month of January, and Pablo María Estefani was in possession thereof up to the time of his death in the capacity of lessee.

X.

Pablo María Estefani created a voluntary mortgage on the two parcels of land described under allegation III comprising 20 and 34.900 cuerdas respectively, and on other parcels in favor of the mercantile partnership doing business in this city under the firm name of Schulze & Company, by deeds of August 24, 1886, and July 15, 1887, before the notary, Santiago R. Palmer, of this city; and after the death of Pablo Estefani the partnership concern, Schulze & Company, brought summary foreclosure proceedings against the Succession of Estefani in the abolished Court of First Instance of this city for the recovery of a mortgage credit, and in such foreclosure proceedings the firm of Schulze & Company, in payment of the said credit, was awarded, among other property, the two parcels of 20 and 34.900 cuerdas described under allegation III, and entered into possession thereof.

During the prosecution of the said summary foreclosure proceedings Messrs. Schulze & Company, foreclosing mortgagees,
11 instituted possessory title proceedings in the Court of First Instance of San Germán through their manager, Federico Philippi, with the object of making a prior entry of record in the name of the Succession of Stefani, mortgage debtor, or his privy, Pablo María Stefani, in which possessory title the property of forty (40) cuerdas now belonging to Juan Suris and the subject-matter of this suit of ejectment, did not appear. The said possessory title was approved by the said Court of First Instance of San Germán, now extinct, and was recorded in the name of the Succession of Pablo María Stefani in the Registry of Property of San Germán, having been afterwards recorded in the name of Schulze & Company.

XI.

Messrs. Schulze & Company having become the owners of the Hacienda "Imiza" in the manner set forth in the preceding para-

graph, they rented from the brothers José Salvador and Ramón María Suris the forty (40) cuerdas of land mentioned and referred to in allegation IV together with other lands belonging to the sisters Suris and the brothers Suris, under contracts duly executed.

XII.

When the firm of Messrs. Schulze & Company was in liquidation they appeared by their liquidator, Federico Philippi, before the notary, José Ramón Nazario de Figueroa, on May 5, 1899, and expressed their wish to consolidate the various parcels composing the Hacienda "Imiza" in order to make one single property thereof, and in the first paragraph of the said deed they stated the following:

12 "That by a decision of February 9, 1889, rendered by the Mayaguez court in summary foreclosure proceedings instituted by Schulze & Company against the Succession of Pablo María Stefani y Paoli to recover 7,500 pesos in current money and interest and 8,319.46 pesos, both actions being consolidated into one, there was adjudicated to Schulze & Company the property of the debtor succession which had been seized, consisting of 20 cuerdas of land equivalent to 7 hectares, 86 ares, and 7 centiares, situated in the ward of Sabana Eneas, district of San Germán; bounded on the north by lands of José Salvador Surís, on the west by lands of said Stefani and of the Succession of Rosario Sepúlveda; on the south by lands of the Charity Hospital; and on the east by other lands of the said Stefani; 34,900 cuerdas of another property equal to 13 hectares, 71 ares, and 9 centiares; bounded on the north by lands of Santiago Sambolin, lands of the said Estefani and lands belonging to the brothers Suris; on the west by lands belonging to the said brothers Suris and to the Charity Hospital; on the south by the road which leads from San Germán to Cabo Rojo; and on the east by lands belonging to the Succession of Geronimo Oritz, on which piece of land there is situated a building with masonry columns and galvanized iron, steam engine and boiler, foundations and other accessories, for the manufacture of sugar."

13 There follows the description of another property awarded to Schulze & Company in said summary proceedings.

XIII.

The fourth allegation of the preamble to the said deed of consolidation of Schulze & Company, dated May 5, 1899, is as follows:

"That as some of the estates before referred to, adjoined each other in the same ward and others, while in different wards, abutted the first, all being dependent upon one another—even though some tracts were separate—and especially upon the main lot in which the house and buildings for manufacturing sugar are attached, Messrs. Schulze & Company consolidated them into one single rural property or cane plantation called 'Imiza' situated in the wards of Sabana Eneas and Sabana Grande Abajo of this jurisdiction which was recently surveyed by the civil engineer Pedro Viadé, it resulting that

the first parcel of 30 cuerdas, the second 34 cuerdas, the fourth 170 cuerdas, were found after survey to possess 114.30 cuerdas, in the perimeter of which are to be found two parcels of four and two cuerdas respectively belonging to Sinforoso Quiñones and the two lots acquired from the Misses Suris and from J. Tornabells & Company of 10 and 14 cuerdas respectively, all adjoining one another and forming one single estate of 192.30 cuerdas where the
14 dwelling house and *and* building for the manufacture of sugar are located, which four mentioned parcels while separate from are dependent on the main estate, one comprising 4 cuerdas, another 47.68 cuerdas, and another 7.21 cuerdas, hereinafter described, thus making the total area of the Hacienda 'Iniza' 276.23 cuerdas; and although the said area is less than that appearing in the title deeds, the reason therefor is that the acquisitions were not intended to show an exact number of cuerdas, and for the further reason that Messrs. Schulze & Company sold a portion of land composed of 25 cuerdas to Carmelo Andrés Stefani, according to a deed which has not yet been recorded in the registry of property."

The two parcels referred to in the above-quoted paragraph, consisting of 20 and 31 cuerdas respectively, are those mentioned in allegations III and XII.

XIV.

In the deed of consolidation executed by Messrs. Schulze & Company, in liquidation, on May 5, 1899, already mentioned, the estates consolidated are enumerated and the manner of their acquisition by Schulze & Company set forth, it not being stated therein that Schulze & Company acquired by any title deed the land of the Charity Hospital which appears as the boundary of the ofttimes-repeated lots comprising the 20 and 34.900 cuerdas referred to under allegations III and XII, which parcels are comprised in the parcel containing 192.30 cuerdas the first of the component groups of the consolidated property "Iniza."

15 XV.

That in the first clause of the deed of consolidation executed on May 5, 1899, by Schulze & Company, in liquidation, it is stated:

"That the different kinds of land before surveyed and measured have been grouped into one single rural property or cane plantation called 'Iniza,' which is situated in the wards of Sabana Eneas and Sabana Grande Abajo of the municipal district of San Germán and containing 276.25 cuerdas, divided into five parcels adjoining one another and bounding the main property which contains the principal dwelling house and establishments for the manufacture of sugar; that one of the said parcels on which the dwelling house and buildings for the manufacture of sugar stand, situated in the wards of Sabana Eneas and Sabana Grande Abajo in the municipal district of San Germán, is composed of 192.30 cuerdas, equivalent to 75 hectares, 58 ares, and 39 centiares, bounded as follows: On the north by an inlet which divides the lands of José Boada, lands of the Misses Suris and by those of the Báez Succession; on the south by

the road leading from Cabo Rojo to San Germán and a parcel belonging to the Succession of José Ravry; on the east by lands belonging to Santiago Sambolín; and on the west by lands of Schulze & Company, divided by the road of Barioli and a parcel of land belonging to the Succession of José Ravry, the same containing 192.30 cuerdas, two small parcels belonging to Sinforoso Quiñones, one of four and the other of two cuerdas."

16 The said parcel comprises the two tracts of 20 and 30.900 cuerdas described in allegation XII.

One of the parcels belonging to Sinforoso Quiñones described as adjoining the said parcel of 192.30 cuerdas is part of the parcel marked in the plan as No. 4 which previously belonged to the Sepúlveda Succession, of which the said Quiñones is a member.

XVI.

According to allegation I of the preamble of the said deed of May 5, 1899, the tracts of 20 and 34.900 cuerdas described under allegation XII, bounded at that time on the south and on the west by Charity Hospital lands, and, according to clause 4 of the said preamble, by the said tracts of 20 and 34.900 cuerdas and others, went to make up the parcel of land comprising 192.39 cuerdas. This estate, then, was bounded at the time of its consolidation and is at present bounded on the south and west by Charity Hospital lands, and for this reason the said parcel of 192.30 cuerdas could not be consolidated, because, being grouped from certain tracts, among others, which bounded and are bound by lands belonging to the Charity Hospital, said tracts or portions did not nor do they adjoin each other, because they were and are in part separated by the lands of the Charity Hospital; but Schulze & Company, in the first clause of said deed of consolidation executed on May 5, 1899, unlawfully sought to consolidate the said tracts of 20 cuerdas, 34 cuerdas, 114.40 cuerdas, 19 cuerdas, and 14 cuerdas, and thus make up the parcel of 192.30 cuerdas by maliciously omitting from the general boundaries of that parcel the boundaries of the lands belonging to the Charity Hospital or substituting the same by those of the

17 Hacienda "Iniza," and by means of the said omission or illegal and fraudulent substitution the said lands of the Charity Hospital were inclosed within the said parcel of 192.30 cuerdas, or within some other of the parcels comprising the perimeter of the Hacienda "Iniza," although the said fraud did not result in the recording of the 40 cuerdas of the Charity Hospital lands in the registry of property in the name of Schultze & Company.

XVII.

By reason of the foreclosure of a voluntary mortgage executed by Schultze & Company, in liquidation, in favor of the Banco Español de Puerto Rico on July 21, 1901, the marshal of the District Court of Mayagüez sold to the Banco Español de Puerto Rico on August 14, 1905, the mortgaged properties, among which figures the parcel of 192.30 cuerdas described under allegation XV, and since the said

14th of August, 1905, the Banco de Puerto Rico has remained in unlawful possession and ownership up to November 19, 1907 (?) of the said 40 cuerdas of land belonging to the Charity Hospital and forming the estate known as "Perseguida," described in allegation VIII, now belonging to the plaintiff, Juan Suris. And by virtue of such illegal possession by Francisco Placido Quiñones the vendors have been unable to make delivery thereof to the vendee, plaintiff herein, Juan Suris, as provided for in the deed of assignment of rights and actions of August 12, 1907, executed between the vendors and the vendee, Juan Suris.

XVIII.

The Banco de Puerto transferred to Francisco Placido Quiñones, resident of San Germán, the properties which it acquired
18 under a deed of sale executed by the marshal of the District Court of Mayaguez in the foreclosure proceedings prosecuted by the said bank in the said court of Mayaguez against Schultze & Company, in liquidation, the property known as "Perseguida" not having been included in this sale which was effected on August 14, 1905.

The transfer to Francisco Placido Quiñones by the Banco de Puerto Rico was effected on November 19, 1906, by a deed executed before the notary of this city, José de Diego, and since the said day, November 19, 1906, the said Quiñones has remained in the unlawful and fraudulent possession, without any title of ownership, of the property "Perseguida," subject-matter of this complaint, and has utilized the mesne profits thereof.

XIX.

After the Banco de Puerto Rico had acquired the Hacienda "Imiza" in the form set forth in allegation XVII Federico Philippi, as the liquidator of Schultze & Company, maliciously and unlawfully refused to deliver to José Salvador Suris and to the Succession of Ramón María Suris the said 40 cuerdas of land which he held under lease.

XX.

By a deed executed before the Mayaguez notary, Fernando Vázquez, on August 12, 1907, José Salvador Suris and the Succession of Ramón María Suris, composed of his widow, María de la Concepción Mestre, and his lawful children, María, Josefa, Ana Inés, Salvador, and Jorge Suris y Mestre, assigned to the plaintiff, Juan Suris y Cardona, the right of action which they possessed to sue the present possessor, Francisco Placido Quiñones, for the mesne profits produced and which should have been produced by the said property "La Perseguida," or to sue for damages for the unlawful retention of the said property.

19 XXI.

Francisco Placido Quiñones should deliver to the plaintiff, Juan Suris y Cardona, the property named "Perseguida," according to

the description set forth in the last paragraph of allegation VIII, because the plaintiff is the sole and exclusive owner thereof.

XXII.

Francisco Placido Quiñones, as possessor in bad faith, should pay the plaintiff Suris the mesne profits produced and to be produced from the property named "Perseguida" from November 14, 1906, the date on which he unlawfully acquired the same, making use of the mesne profits to this date which plaintiff calculates to amount to $2,000, and should further pay to the plaintiff the value of the mesne profits obtained and to be obtained from the said property from this date, up to the final delivery thereof, to the said plaintiff.

XXIII.

Accompanying this complaint are the following documents:

A. Copy of a deed of sale of land executed by José Salvador and Ramón María Suris in favor of Pablo María Stefani on January 18, 1883, before the San Germán notary, José Ramón Nazario de Figueroa.

B. Copy made by the civil engineer, Herminio Irizarry, of the plan approved by the duly-authorized surveyor, Carlos B. Hernández, attached to the original of the said deed of January 18, 1883, and filed in this year's protocol, now in charge of Joaquin Nazario de Figueroa, of San Germán, the said copy being accompanied by an affidavit of the engineer, Herminio Irizarry.

20 C. Copy of a deed of consolidation of a rural property executed by the mercantile firm of Schulze & Company, in liquidation, before the notary José Ramón Nazario de Figueroa on May 5, 1899.

D. Copy of the deed of consolidation of rural properties executed by José Salvador and Ramón María Suris before José Ramón Nazario de Figueroa, notary of San Germán, on February 15, 1882.

E. Copy of the deed of sale of a rural property executed by José Salvador Suris, María Concepción Mestre and María, Josefa, Salvador, and Jorge Suris, in favor of Juan Suris, executed on July 14, 1907, before the notary Fernando Vázquez.

F. Copy of the deed of sale of rural property executed by Ana Inés Suris in favor of Juan Suris on July 22, 1907, before the notary Fernando Vázquez.

G. Copy of the assignment of right of actions executed by José Salvador Suris and the Succession of Ramón María Suris in favor of Juan Suris Cardona on August 12, 1907, before the notary Fernando Vázquez.

Wherefore, plaintiff prays the court that judgment issue ordering Francisco Placido Quiñones to perform the following acts:

1. To deliver to the plaintiff, Juan Suris Cardona, the property called "Perseguida," now known as Charity Hospital lands, as described in the last paragraph of allegation VIII.

2. To pay to the plaintiff $2,000 for the mesne profits of the

estate produced or which should have been produced by said property from November 14, 1906, to the present time.

3. To pay to the said plaintiff the amount of the mesne profits that may and should be produced from said property from
21 this date up to the date of its final delivery to the plaintiff, and

4. To pay the costs of the action.

(Signed) FERNANDO VÁZQUEZ,
Attorney for Plaintiff.

Mayaguez, September 4th, 1907.

The undersigned being duly sworn states that he is the plaintiff in this action; that he has read the allegations contained in the foregoing complaint, and that the said allegations, of his own knowledge and upon information and belief, are true.

(Signed) JUAN SURIS CARDONA.

San Germán, September 11, 1907.

Subscribed and sworn to before me this 11th day of September, 1907.

(Signed) ALVARO FERNÁNDEZ,
Secretary Municipal Court.

In the District Court for the Judicial District of Mayaguez.

Civil Action No. 1560.

JUAN SURIS CARDONA, Plaintiff,
v.
FRANCISCO P. QUIÑONES, Defendant; EL BANCO DE PUERTO RICO, Warrantor.

Recovery of a Rural Property and Claim for Mesne Profits.

The undersigned attorney, in the name of the defendant,
22 Francisco Placido Quiñones, in the above-entitled action and under section 105 of the Code of Civil Procedure, demurs to the complaint filed by Juan Suris Cardona on the grounds set forth in subdivision 6 of the said section, namely:

That the complaint does not state facts sufficient to constitute a cause of action.

The grounds upon which the undersigned bases his demurrer are:

1. The complaint does not specify the kind of lease entered into with regard to the lands sought to be recovered, whether oral, by private document, or by public instrument, the term of duration and the conditions peculiar to such contracts. The statement of such details is very important to permit of argument thereon and investigation of the evidence there may be in regard to the existence or non-existence of the said contracts.

2. The said complaint does not state in a clear, precise, and com-

prehensive manner whether the lands sought to be recovered are or are not included in the before-mentioned title deeds of the plantation "Imiza," whether the said deeds be the deeds of ownership of Francisco Placido Quiñones or of the former owners.

This averment must be made in order to decide whether or not the previous designation of nullity of the said titles, which in any event would give rise to an action of ejectment, is essential.

In view of the foregoing the undersigned prays the court to sustain the present demurrer and to dismiss the complaint with costs against the plaintiff.

San Juan for Mayaguez, September 21, 1907.

(Signed) BENITO FORES.

23 In the District Court for the Judicial District of Mayaguez.

No. 1560, Civil Action.

JUAN SURIS CARDONA, Plaintiff,
v.
FRANCISCO P. QUIÑONES, Defendant; EL BANCO DE PUERTO RICO, Warrantor.

The Banco de Puerto Rico, summoned by the defendant for eviction, appears herein through *his* attorney, Antonio Sarmiento, and demurs to that part of the complaint concerning it which refers to the ejectment proceedings, basing said demurrer on subdivision 6 of section 105 of the Code of Civil Procedure, namely, that the complaint does not state facts sufficient to constitute a cause of action.

Grounds of the Demurrer.

The complaint seeks to recover from Francisco Placido Quiñones, as purchaser from the Banco de Puerto Rico of the Hacienda "Imiza," a property comprising 40 cuerdas, fully described in the complaint.

In allegation XI of the said complaint it is shown that Schulze & Company leased from the predecessors in interest of the plaintiff the 40 cuerdas sued for.

And in allegation XIX of the said complaint it is stated that "after the Banco de Puerto Rico acquired the property
24 "Imiza" Federico Philippi, as liquidator of Schulze & Company, maliciously and unlawfully refused to deliver to José Salvador Suris and to the Succession of Ramón María Suris, predecessors in interest of the plaintiff, the said 40 cuerdas of which he was the lessee.

If, then, Schulze & Company held under lease the said 40 cuerdas and this firm was sued therefor after the bank had acquired the Hacienda "Imiza," and an action is brought against Francisco

Placido Quiñones, as successor of the Banco de Puerto Rico, to recover the 40 cuerdas, it is necessary that the complaint should show on what ground recovery is now sought from Francisco Placido Quiñones, privy of the Banco de Puerto Rico, of property which after the plantation "Imiza" had been acquired by the bank was not sought to be recovered from the bank but from Schulze & Company.

Wherefore, the undersigned prays the court to enter an order sustaining this demurrer, with costs against the plaintiff.

San Juan, October 7, 1907.

(Signed) ANTONIO SARMIENTO,
Attorney for El Banco de Puerto Rico.

In the District Court for the Judicial District of Mayaguez.

Civil Action No. 1560.

JUAN SURIS CARDONA, Plaintiff,
v.
FRANCISCO P. QUIÑONES, Defendant, EL BANCO DE PUERTO RICO, Warrantor.

Ejectment.

25 *Order.*

The defendants, Francisco Placido Quiñones and the Banco de Puerto Rico, demurred to the complaint alleging that it does not state facts sufficient to constitute a cause of action.

After hearing the allegations of the attorneys for the parties the court holds that the demurrers are not supported by law. There is no ground nor reason why this demurrer should prosper. The action brought in the complaint is an action for ejectment, which is a real action and consequently directly aimed against a thing; according to the rule of law of res pro domino suo clamat it is immaterial whether Schulze & Company be or be not the lessees seeing that in any event it appears from the document itself that the said lessees failed to return the property and transferred it to a third party, Francisco Placido Quiñones, who is the defendant in this case and who obtained it from the Banco de Puerto Rico. In the same way it is stated in the complaint that the plaintiff is the owner of a parcel of land which is clearly and exactly described so that if segregated as a certain lot it could be identified by a judicial officer in case of foreclosure and the ownership is based on a recorded title. It thus appears from the contents of the complaint that the latter is directed against a person who, according thereto, holds or possesses the thing sought to be recovered, and these being the essential or indispensable requisites to enable an action to prosper, it is manifest that there is no ground on which to sustain the demurrer filed by

the defendants, which is therefore dismissed in all its parts,
26 and the defendants are granted ten days within which to answer the complaint.

Mayaguez, P. R., October 30, 1907.

(Signed) ISIDORO SOTO NUSSA,
District Judge.

In the District Court for the Judicial District of Mayaguez.

Civil Action No. 1560.

JUAN SURIS CARDONA, Plaintiff,
v.
FRANCISCO P. QUIÑONES, Defendant, EL BANCO DE PUERTO RICO, Warrantor.

Recovery of a Rural Property.

The undersigned attorney, in representation of Francisco Placido Quiñones y Quiñones, in the above-entitled cause, makes answer to the complaint in the form prescribed by subdivision 2 of section 110 of the Code of Civil Procedure.

I.

For lack of necessary information and belief he denies the allegations set forth in the complaint under numbers 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16 and 19, 20 and 23.

II.

He specifically denies allegation XVII because Francisco Placido Quiñones y Quiñones is not in unlawful possession of prop-
27 erty belonging to anyone, but is in lawful possession of property obtained in good faith and under proper title transferred to him by the Banco de Puerto Rico by deed executed in Mayaguez before the notary, Mariano Riera Palmer, on November 19, 1906.

III.

He also specifically denies allegation XVIII alleging that it is untrue that Quiñones y Quiñones is in possession of any property named "Perseguida."

IV.

He also specifically denies allegations XXI and XXII alleging that Quiñones y Quiñones is not obliged to return that which he does not possess, nor to deliver imaginary mesne profits.

New Matter of Defense.

I.

Francisco Placido Quiñones y Quiñones, a citizen of Porto Rico, is and has been in possession in good faith and by lawful title from November 19, 1906, of the various parcels of land forming the Hacienda "Imiza," situated in the wards of Sabana Eneas and Sabana Grande Abajo of the municipal district of San Germán which were acquired by purchase from the Banco de Puerto Rico by deed executed in Mayaguez before the notary, Mariano Riera Palmer, on the said date, the aforesaid property being recorded in the registry of property. Not long ago the said property was surveyed with the knowledge of the adjoining owners by the duly-qualified surveyor of Mayaguez, Pedro Viadé, as shown in a plan made and certified to by him in the month of July last.

28 II.

The said parcels of land in possession of Quiñones have been possessed in good faith and under lawful title by the Banco de Puerto Rico from the time they were sold by the marshal of the District Court of Mayaguez, or August 14, 1905.

III.

The said lands were also possessed in good faith and under lawful title by Schultze & Company from the time they were adjudicated to this firm by the now extinct court of First Instance of Mayaguez in foreclosure proceedings which the said company brought against the Succession of Pablo María Stefani.

IV.

The said lands were possessed in good faith and under lawful title from the time the said Pablo María Stefani acquired the same, until he mortgaged them to the said Schultze Company, the possession of Stefani dating back long before the year 1897, when he died, his heirs continuing in possession until the said parcels of land were adjudicated and delivered to the creditors, Schultze & Company.

V.

The said lands never have been in possession of any other persons than their true owners although by reason of the bankruptcy of Schultze & Company they were for some time under the management of Genaro Cartagena by order of the Federal Court.

VI.

José Salvador, Ramón María Suris and Juan Suris Cardona have always resided in the city of San Germán, from where the
29 said lands can be reached in half an hour. They have not absented themselves from the said city, and the sisters Mar-

garita and Cristina Suris have possessed and do possess lands adjoining those referred to, and their brothers José Salvador and Ramón María Suris attended to the management and maintenance of the lands.

VII.

José Salvador and Ramón María Suris have never been in possession of the so-called property "Perseguida," containing the 40 cuerdas of land referred to in the complaint. Neither have the heirs of Ramón María Suris enjoyed such possession. Still less has Juan Suris Cardona possessed that which was not possessed by the alleged former owners of an imaginary property.

VIII.

José Salvador and Ramón María Suris, on November 26, 1870, in acknowledging an annuity in favor of the Concepción Hospital of San Germán, mortgaged a piece of land comprising 40 cuerdas which, they alleged, formed part of 70 cuerdas measured by the surveyor Carlos B. Hernández, but when the said hospital proceeded to foreclose its mortgage the 40 cuerdas which were specially assigned for execution were not found, and the execution was then made to cover 100 cuerdas of land containing the buildings of the old Hacienda "Cristina," which may be seen from the accompanying certificate issued by the secretary of that court.

IX.

Neither Suris brothers, nor José Salvador, nor Ramón María Suris, have rendered any schedules of the said property "Perseguida," for purposes of taxation, since the year 1883, according to another certificate attached hereto and issued by the secretary of the Municipal Court of San Germán.

X.

Suris brothers owed delinquent taxes to the municipality of San Germán and after the proper certificates had been issued summary proceedings were had. José S. Suris, who was a member of the firm of Suris Brothers, told the collector that the lands on which taxes were sought to be recovered were in the possession of Schulze & Company who refused to pay the same on the ground that they were back taxes for which they were not responsible, according to another certificate of the said secretary attached hereto. And in the year 1893 the Alcaldía of San Germán attempted to recover taxes from José S. Suris through his wife, and the said Suris then wrote in his own hand a statement that neither his wife nor he possessed any lands in Sabana Grande Abajo, the official who was charged with the collection noting on the same paper that Suris did not appear on the assessment schedule, but that his wife did, for lands which she subsequently sold to Santiago Sambolín. This is also shown in the other certificate accompanying this answer.

XI.

In order to collect taxes due Suris Brothers, of which José Salvador and Ramón María Suris were partners, there were attached 12 cuerdas of land which the said parties and their sister Cristina Suris stated composed a part of those lands mortgaged in favor of the Charity Hospital. The municipality having attached these lands it sold them to Martín Pérez y Vilanova, it not being
31 shown that the same were afterwards acquired by José Salvador and Ramón María Suris. This is shown by the certified copies of the order of attachment and the resolutions of the municipality attached hereto.

XII.

Despite the sale of the said 12 cuerdas of land which José Salvador and Ramón María Suris stated formed a part of the lands mortgaged to the Charity Hospital, the aforesaid José Salvador and Ramón María Suris made the barefaced statement in a public document that certain parcels of land acquired under old titles previous to that sale constituted a property composed of 40 cuerdas of land named "La Perseguida," and that it was the same that had been mortgaged to the Charity Hospital, and by so grouping an imaginary property which they did not possess nor pay taxes on, they created, or tried to create, a legal title of ownership recording the same in the registry of property as though wishing to shelter themselves behind an uncertain and imaginary right, because if anyone possesses those lands under a title and by virtue of a better right thereto, such as that of possession, it would be immaterial to him whether other persons, maliciously and unknown to him, made a record of the imaginary property "Perseguida." If that record signifies anything, it is a tricky method employed for the consummation of a crime which will be prosecuted at the proper time before a court of competent jurisdiction.

XIII.

A short time ago and when the bringing of this unfounded complaint was under way, the plaintiff and his vendors attempted to have the name of this imaginary property "Perseguida" entered
32 in the Treasurer's office so as to pay taxes thereon, but that subterfuge failed because no one could point out to the Treasurer of Porto Rico, through his representative, the internal revenue assessor, where the unknown property lay.

XIV.

The parcels of land which are said to constitute the "Perseguida" property were bounded by the "Cristina" plantation, and that boundary was substituted by the plantation "Carolina" when the record of the consolidated property was made, and recently Juan Suris Cardona states that the lands of Sinforoso Quiñones adjoined the said property, which did not appear as such, nor is it stated that he acquired the same from other abutting owners. These changes, if

they lead to anything, serve to show that the property "Perseguida" did not exist, and that it is being attempted to usurp the rights of an honest citizen to a property which he owns under just title and in good faith.

XV.

The plaintiff, Juan Suris Cardona, is the lawful son of José Salvador Suris y Marchani with whom he has lived and who have in common transacted all details and business transactions realized; and the said Juan Suris Cardona is a first cousin of the sons of Ramón María Suris and a nephew-in-law of the mother of those sons, with whom he enjoys the greatest friendship and goodwill, they helping and relieving each other mutually.

XVI.

Pablo María Stefani, Schulze & Company, the Banco de Puerto Rico and Francisco Placido Quiñones have been in public, peaceful and uninterrupted possession of the lands which con-
33 stitute and are known as the Hacienda "Imiza" in the character of owners. The possession by the first dates back long before the year 1887 and the titles of all of them are recorded in the registry of property, and therefore the defendant, Francisco Placido Quiñones y Quiñones, has a perfect right to allege, as he does allege, the prescription of ownership of the so-called property "Perseguida" on the grounds of sections 1841, 1842, 1850 and 1858 of the Revised Civil Code.

XVII.

The averment made in the complaint regarding the lease of the so-called and imaginary property "Perseguida" is of no legal value, and if such contracts of leases really exist, they in nowise affect the plea of prescription herein made, seeing that the plaintiff maliciously fails to state whether the said contracts were verbal or written, their period of duration, terms and other necessary details to prove their validity, nor their record in the registry of property, as required in case such were made.

XVIII.

The titles of ownership of the land possessed by Francisco Placido Quiñones y Quiñones are properly recorded in the registry of property and have not been objected to as fraudulent or null.

In view of the foregoing defendant prays that the court render judgment dismissing in all its parts the complaint filed by Juan Suris Cardona with costs against the latter, reserving to the defendant the right to bring the proper criminal action against the said plaintiff and the vendors of the imaginary property "Perseguida."

San Germán for Mayaguez, November 23, 1907.

(Signed) BENITO FORES,
Attorney for Defendant.

34 I, Francisco Placido Quiñones, being duly sworn, depose and say: That I am the defendant in this action; that I have read the allegations contained in the foregoing answer, and that of my own knowledge and upon information and belief the said allegations are true.

(Signed) FRANCO P. QUIÑONES.

Subscribed and sworn to before me this 23d day of November, 1907.

(Signed) MIGUEL JUAN LLANERAS.

In the District Court for the Judicial District of Mayaguez.

No. 1560. Civil Action.

JUAN SURIS CARDONA, Plaintiff.

v.

FRANCISCO P. QUIÑONES, Defendant; EL BANCO DE PUERTO RICO, Warrantor.

Recovery of Rural Property.

The Banco de Puerto Rico as the grantor or warrantor of the defendant, through its attorney, Antonio Sarmiento, as to the action of ejectment brought, answers the complaint and alleges:

I.

That by reason of insufficient information and belief it spe-
35 cifically denies the facts set forth in allegations 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 19 and 20 of the complaint.

II.

That it admits the facts set forth in the first part of allegation XVII, terminating with the words "allegation XV," to be true, and emphatically and absolutely denies all the rest of said allegation.

III.

That in the same manner he admits the facts stated in the first paragraph of allegation XVIII of the complaint to be true, and emphatically and absolutely denies all the rest of the said allegation.

IV.

That he absolutely denies the facts set forth in allegation XXI of the complaint, and

V.

That he neither affirms nor denies the facts set forth in allegation XXII nor makes any statement regarding allegation XXIII, be-

cause the former do not concern the petitioner and the latter do not constitute an essential allegation of the complaint.

Wherefore, the undersigned prays the court to render judgment dismissing the action for ejectment with costs against the plaintiff.

San Juan, November 25, 1907.

(Signed) ANTONIO SARMIENTO,
Attorney for the Banco de Puerto Rico.

36 Manuel Paniagua, President of the Banco de Puerto Rico, under oath deposes and says: That he has read the foregoing answer to the complaint and that to the best of his knowledge and belief the facts therein stated are true.

San Juan, November 27, 1907.

(Signed) MANUEL PANIAGUA.

Subscribed and sworn to before me.

(Signed) JULIO CESAR GONZÁLEZ.
[NOTARIAL SEAL.]

37 In the District Court for the Judicial District of Mayaguez, Porto Rico.

No. 1560.

JUAN SURIS CARDONA, Plaintiff,
v.
FRANCISCO P. QUIÑONES, Defendant; BANCO DE PUERTO RICO, Warrantor.

Civil Action for the Recovery of Rural Property and Value of Products.

Ejectment.

Amendments to Complaint.

The plaintiff, through its attorney, under leave to amend granted by the court in its decision of May 4 last, amends his complaint as follows:

Allegation VIII of the complaint is amended in the following manner: In line 35, next to the last on page 7, the words "and the plantation Imiza" shall be added after the word "Quiñones."

Allegation X of said complaint is amended by adding, after the words "having entered into possession thereof," the following paragraph: "During the prosecution of the said foreclosure proceedings Schulze & Company, execution creditor, brought possessory title proceedings in the Court of First Instance of San Germán through its manager, Federico Philippi, for the purpose of making a prior record in the name of the Stefani Succession, execution debtor, or

his predecessor in interest, Pablo María Stefani, in which
38 possessory title proceedings the estate composed of forty cuerdas now belonging to Juan Suris and the object of this action of ejectment, does not appear. The said possessory title proceedings were approved by the said Court of First Instance of San Germán, now extinct, and was recorded in the name of the Succession of Pablo María Stefani in the registry of property of San German and was afterwards recorded in the name of Schulze & Company."

Allegation XVI, page 12 of the complaint, is amended in the following manner: After the word "Charity," in line 12, the words to the end of the allegation shall be cancelled and the following inserted in their place: "and for this reason the said parcel of 192.30 cuerdas could not be consolidated, because, being grouped from certain tracts, among others, which bounded and are bound by lands belonging to the Charity Hospital, said tracts or portions did not nor do they adjoin each other, because they were and are in part separated by the lands of the Charity Hospital; but Schulze & Company, in the first clause of said deed of consolidation executed on May 5, 1899, unlawfully sought to consolidate the said tracts of 20 cuerdas, 34 cuerdas, 114.30 cuerdas, 10 cuerdas, and 14 cuerdas, and thus make up the parcel of 192.30 cuerdas by maliciously omitting from the general boundaries of that parcel the boundaries of the lands belonging to the Charity Hospital or substituting the same by those of the Hacienda Imiza, and by means of the said omission or illegal and fraudulent substitution the said lands of the Charity Hospital were inclosed within the said parcel of 192.30 cuerdas, or within some other of the parcels comprising the perimeter of the Hacienda Imiza, although the said fraud did not result in the recording of the 40 cuerdas of the Charity Hospital lands in the registry of property in the name of Schulze & Company.

39 The prayer is amended by adding in lines 5 and 6 on page 16 of the complaint and after the words "the property called Perseguida" the words "previously, but now lands of the Charity Hospital," then following the original text of the prayer where it states "according to the description contained in the last paragraph of Allegation VIII" to the end of the said prayer.

Mayaguez, P. R., May 13, 1908.

(Signed) FERNANDO VÁZQUEZ,
Attorney for the Plaintiff.

In the District Court for the Judicial District of Mayaguez.

No. 1560.

JUAN SURIS CARDONA, Plaintiff,
v.
FRANCISCO PLACIDO QUIÑONES, Defendant; EL BANCO DE PUERTO RICO, Warrantor.

Civil Action for Recovery of Rural Property.

The plaintiff, represented by the undersigned attorney, respectfully deposes and says: That on May 18 there was presented an amendment to the complaint, notice whereof was served on the adverse party on the same day, May 18, 1908.

40 That more than ten days have elapsed since the service of the notice upon the attorney for Francisco Placido Quiñones and more than twenty days since it was served on the attorney for the Banco de Puerto Rico without any demurrer or answer having been made by either of the said parties to the said amendments.

Wherefore, in accordance with the provisions of law, the undersigned prays that the defendants be entered in default as to the amended allegations.

Mayaguez, P. R., June 11, 1908.

(Signed) FERNANDO VAZQUEZ,
Attorney for Plaintiff.

No. 1560, Civil Action.

JUAN SURIS CARDONA, Plaintiff,
v.
FRANCISCO PLACIDO QUIÑONES, Defendant; EL BANCO DE PUERTO RICO, Warrantor.

Recovery of Rural Property.

The defendants not having answered the amendments to the complaint filed by the plaintiff within the legal period of time they are, at the instance of the plaintiff, noted in default as to said amendments.

Friday, June 12, 1908.

FRANCISCO LLAVAT, *Secretary.*
By FRANCISCO AZUAR, *D'p'ty.*

41 That after the foregoing amendments Allegations VIII, X and XVI and the prayer of the complaint filed were changed to read as follows:

Eight.

The forty cuerdas of land specified in plan No. 3 as belonging to the Charity Hospital never were nor are they now the property of

the said hospital. This religious establishment never had nor does it now possess any land in the wards of Sabana Eneas or Sabana Grande, District of San Germán, unrecorded in the registry of property.

Said forty cuerdas of land belonged to José Salvador and Ramón María Suris, having been acquired in the manner set forth in Allegation I, and the undivided half thereof became the property of the Succession of Ramón María Suris, composed of his widow María de la Concepción Mestre, and of their lawful children, María, Josefa, Ana Inés, Salvador, and Jorge Suris y Mestre, who were declared to be his intestate heirs by a decision of the District Court of Mayaguez on April 20, 1907. And the Succession of Ramón María
42 Suris recorded in its name the undivided half of the property in the registry of San Germán, on folio 24, volume 23, property No. 90, second entry.

At this time the said property of 40 cuerdas belongs exclusively to the plaintiff, Juan Suris, who acquired the same from José Salvador Suris and the Succession of Ramón María Suris by deeds executed before the notary of Mayaguez, Fernándo Vázquez, on July 14 and 22, 1907, for the sum of $5,500, the same being recorded in his name on folio 24, over, and 25, over, of volume 2 of San Germán, property No. 90, records 3 and 4, under the following description which it still retains: Rural property composed of forty cuerdas, situated in the wards of Sabana Eneas and Sabana Grande, Municipal District of San Germán, equivalent to 15 hectares, 68 ares, and 27 centiares, bounded on the north by the cane plantation called Imiza; on the south by the road leading from San Germán to Cabo Rojo, lands of Sinforoso Quiñones and the Hacienda Imiza; and on the east and west by the said Hacienda Imiza.

The difference between the boundaries in this description and that given under allegation IV is explained by the fact that the lands with the previous boundaries of Velez Borrero, Suris brothers and the Hacienda Carolina, are now a part of the Hacienda Imiza.

Ten.

Pablo María Stefani created a voluntary mortgage on the two parcels of land described under allegation III comprising 20 and 34.900 cuerdas respectively, and on other parcels in favor of the mercantile partnership doing business in this city under the
43 firm name of Schulze & Company, by deeds of August 24, 1886, and July 15, 1887, before the notary, Santiago R. Palmer, of this city; and after the death of Pablo Stefani the partnership concern, Schulze & Company, brought summary foreclosure proceedings against the Succession of Stefani in the abolished Court of First Instance of this city for the recovery of a mortgage credit, and in such foreclosure proceedings the firm of Schulze & Company, in payment of the said credit, was awarded, among other property, the two parcels of 20 and 34.900 cuerdas described under allegation III, and entered into possession thereof.

During the prosecution of the said summary foreclosure proceedings Messrs. Schulze & Company, foreclosing mortgagees, instituted

possessory title proceedings in the Court of First Instance of San Germán through their manager, Federico Philippi, with the object of making a prior entry of record in the name of the Succession of Stefani, mortgage debtor, or his privy, Pablo María Stefani, in which possessory title the property of 40 cuerdas, now belonging to Juan Suris and the subject-matter of this suit of ejectment, did not appear. The said possessory title was approved by the said Court of First Instance of San Germán, now extinct, and was recorded in the name of the Succession of Pablo María Stefani in the registry of property of San Germán, having been afterwards recorded in the name of Schulze & Company.

Sixteen.

According to allegation I of the preamble of the said deed of May 5, 1899, the tracts of 20 and 34.900 cuerdas described under allegation XII, bounded at that time on the south and on the west by Charity Hospital lands, and, according to clause 4 of the said
44 preamble, by the said tracts of 20 and 34.900 cuerdas and others, went to make up the parcel of land comprising 192.30 cuerdas. This estate, then, was bounded at the time of its consolidation and is at present bounded on the south and west by Charity Hospital lands, and for this reason the said parcel of 192.30 cuerdas could not be consolidated, because, being grouped from certain tracts, among others, which bounded and are bound by lands belonging to the Charity Hospital, said tracts or portions did not nor do they adjoin each other, because they were and are in part separated by the lands of the Charity Hospital; but Schulze & Company, in the first clause of said deed of consolidation executed on May 5, 1899, unlawfully sought to consolidate the said tracts of 20 cuerdas, 34 cuerdas, 114.30 cuerdas, 10 cuerdas, and 14 cuerdas, and thus make up the parcel of 192.30 cuerdas by maliciously omitting from the general boundaries of that parcel the boundaries of the lands belonging to the Charity Hospital or substituting the same by those of the Hacienda Imiza, and by means of the said omission or illegal and fraudulent substitution the said lands of the Charity Hospital were inclosed within the said parcel of 192.30 cuerdas, or within some other of the parcels comprising the perimeter of the Hacienda Imiza, although the said fraud did not result in the recording of the 40 cuerdas of the Charity Hospital lands in the registry of property in the name of Schulze & Company.

Wherefore, the undersigned prays the court that judgment issue ordering Francisco Placido Quiñones to perform the following acts:

1. To deliver to the plaintiff, Juan Suris Cardona, the property called Perseguida, now known as Charity Hospital lands, as described in the last paragraph of allegation VIII.
45 2. To pay to the plaintiff $2,000 for the mesne profits of the estate produced or which should have been produced by said property from November 14, 1906, to the present time.
3. To pay to the said plaintiff the amount of the mesne profits that

may and should be produced from said property from this date up to the date of its final delivery to the plaintiff, and

4. To pay the costs of the action.

(Signed) FERNANDO VÁZQUEZ,
Attorney for Plaintiff.

46 In the District Court of Mayaguez.

No. 1560.

JUAN SURIS CARDONA, Plaintiff,
vs.
FRANCISCO PLÁCIDO QUIÑONES et al., Defendants.

Judgment.

On the 30th April 1909, this cause was called for trial the plaintiff Juan Suris Cardona appearing through his attorneys Fernando Vázquez and Salvador Amill, and the defendants Francisco Plácido Quiñones through his attorney Benito Forés, and the Spanish Bank of Porto Rico, grantor, through *his* attorney Antonio Sarmiento.

The court, after hearing the briefs of the parties, the evidence introduced and the arguments on both sides, reserved its decision for to-day when it holds that the law and the facts are in favor of the defendants; the court, therefore, dismisses the complaint with costs against the plaintiff. Let this judgment be entered in the proper book, and writ issue to the marshal for the compliance therewith. Done at Mayaguez, this 7th of May, 1909.

(Signed) OTTO SCHOENRICH,
District Judge.

I certify:

(Signed) TOMÁS C. VERA, *Secretary.*

47 In the Supreme Court of Porto Rico.

No. 439.

JUAN SURÍS CARDONA, Plaintiff and Appellant,
vs.
FRANCISCO P. QUIÑONES et al., Defendant- and Respondents.

Appeal from a Judgment Rendered in Favor of Defendant- by the District Court of Mayaguez.

SAN JUAN, PORTO RICO, 25th May, 1911.

Mr. Justice MACLEARY delivered the opinion of the Court:

This is an action brought by Surís against Quiñones and the Bank of Porto Rico to recover a certain tract of land containing forty acres and the mesne profits of the same, in which judgment was rendered

in favor of the defendants on May 17, 1908. Some necessary delay has occurred on account of the very voluminous record and the sickness and subsequent demise of the justice of this Court to whom the case was first assigned as ponente in the preparation, submission, and consideration of the questions involved. The suit was filed on December 17, 1907, by Juan Surís Cardona against Francisco P. Quiñones and the Bank of Porto Rico, seeking recovery of a rural estate and its fruits. The complaint is very extensive and sets out the facts in detail on which the plaintiff relies; but the whole matter taken together amounts to an action of ejectment,
48 claiming the title and possession of the lands described and the mesne profits of the estate which is sought to be recovered. The prayer of the complaint being divided into four paragraphs amounts, in substance, to seeking the recovery of the title and the possession of the forty acres of land sued for and $2,000 damages for its detention, and such further damages as may accrue between the institution of the suit and the rendition of the judgment, and for all costs of the suit.

The two defendants made answer separately, Quiñones denying nearly all the allegations in the complaint for lack of sufficient information, some of them expressly and others in a qualified manner. He further alleges, as new matter of defense, possession of the property sued for, in person, since August 14, 1905, and through former owners, from whom he derived his title, up to a long time before 1887, pleading prescription or the statute of limitations. He further denies that the plaintiff ever had possession of the property in controversy, or ever paid any taxes thereon, or ever rendered the same for taxation. Defendant Quiñones also alleges that the titles to the land in controversy, under which he claims, had been duly registered according to law. Wherefore he prays that the complaint be dismissed with costs against the plaintiff. The other defendant, the Bank of Porto Rico, makes a similar answer.

A trial was had before Judge Schoenrich in the district court, in which a vast amount of oral and documentary evidence was introduced, and, finally, on May 7, 1909, the trial judge found the law and the facts in favor of the defendants and dismissed the complaint with an order for costs against the plaintiff. From this judg-
49 ment an appeal was prosecuted, and the case was vigorously contested in this court both by elaborate briefs and extended oral arguments, and it is finally in our hands for decision. Then let us examine the questions raised in the suit.

During the years from 1860 to 1870 the brothers, José Salvador and Ramón María Surís, purchased from different persons, by means of public deeds, several parcels of land, up to the number of 17, situated in the ward of Sabana Eneas of San Germán, of 16 of the deeds to which parcels of land they have filed certified copies in this suit.

On November 26, 1870, both brothers acknowledged to have received from the Charity Hospital at San Germán the sum of 6,000 crowns, Spanish currency, and in order to guarantee the said amount and the interest on the same, they mortgaged, in favor of said in-

stitution, 40 acres of land, which they said were a part of the 70 acres of lowlands which they possessed and owned in the ward of Sabana Eneas, and which were bounded on the north and west by the plantation "Carolina;" on the south by the road leading from Cabo Rojo to San Germán; and on the east by other lands of Messrs. Surís; and they proved their ownership of the mortgaged lands by a certificate issued by the land surveyor, Carlos B. Hernández, on the 15th day of the previous month, which certificate they exhibited in order that it might be annexed to the document; and also by the deeds of purchase of 16 out of the 17 parcels of land above mentioned, which titles were described in the mortgage deed. The aforesaid certificate of the land surveyor, Hernández, shows that he had drawn a map and calculated the area of a parcel of 70 acres of lowland, which is bounded on the north by the plantation
50 "Carolina" and lands belonging to the heirs of Maximo Quiñones; on the east by the plantation "Cristina;" on the south by the road leading to Cabo Rojo and lands of Esteban Bartoli; and on the west by the plantation "Carolina" and lands belonging to the heirs of Maximo Quiñones.

The aforementioned mortgage was recorded in the books of the former registry of mortgages on November 29, 1970.

Twelve years later, on February 15, 1882, by a public deed the brothers, José Salvador and Ramón María Surís, after making a statement of their 17 title deeds, consolidated the 17 parcels of land, because, as they stated, said lands were adjacent to each other, and they formed of the same a single estate, to which they gave the name of "Perseguida" and which contained 40 acres of land situated between the following landed properties: On the north, the plantation "Carolina," property of Vélez Borrero; on the south, the road leading to Cabo Rojo; on the east, other lands of the brothers Surís; and on the west, the plantation "Carolina." This consolidated property, the value of which they fixed at $3,000, was recorded in the name of the aforesaid brothers in the Registry of Property of San Germán, in which were mentioned the different titles to the consolidated estate and the mortgage constituted on the latter, as a guarantee, in favor of the Charity Hospital.

After the death of Ramón María Surís in the year 1900, his widow and children were declared to be his heirs, by a judicial decree of April 20, 1907, and they presented said document in the registry of property, where it was recorded on June 24 of the same year, 1907, with regard to the co-ownership of one-half of the undivided estate "Perseguida."

51 By the public deeds of July 14 and 22, 1907, José Salvador Surís and the widow and children of Ramón María Surís sold to Juan Surís Cardona the whole of the aforesaid estate "Perseguida," for the sum of $5,500, which they acknowledged to have received prior to said sales, and the latter were likewise recorded in the corresponding registry of property.

A few days after the aforesaid deeds of sale had been made they executed, on the 12th of the following month, another deed, in which the vendors stated that they had not been able to deliver the

estate to the purchaser thereof, because at the time the sale was effected said estate was illegally occupied by Francisco Plácido Quiñones, who had possessed the same since November 19, 1906; and up to that date said property had been in the possession of the Bank of Porto Rico, which had possessed the estate since August 14, 1905; and since the latter date, said vendors had not received from any one any sum of money for rents, produce, or profits derived from said estate, for which reason they ceded and transferred to the purchaser, Juan Surís Cardona, their rights and actions in order that he might claim the revenue that had been produced, or should have been produced, by the estate sold to him.

Such is the history of the estate "Perseguida" of 40 acres of land according to the registry of property, and the plaintiff, availing himself of the same, brought an action for recovery against Francisco Plácido Quiñones claiming also the revenues of the estate in order that the latter might be restored to him together with said revenues;

and the Bank of Porto Rico answered in this action on ac-
52 count of having been summoned by the defendant for the purpose of eviction.

The facts on which the plaintiff bases his complaint are: That the aforesaid estate "Perseguida," which is also known by the name of "Charity Hospital Estate" in consequence of the mortgage constituted thereon; is illegally, and without any title whatever, occupied by the defendant, Francisco Plácido Quiñones, inasmuch as the owners of said estate have never sold the same to him, nor to any other person; that the brothers Surís sold to Pablo Ma. Stefani two parcels of land, one of 20 acres and another of 34.9 acres; both of which parcels of land were bounded on the south and west, respectively, by the estate "Perseguida" or "Charity Hospital Estate;" but that the latter was not sold but leased to him in the year 1883, and that he kept the same in this manner until his death. That after the death of Stefani, Schulze & Co. prosecuted executory proceedings in order to collect from his succession a certain mortgage which said Stefani had constituted on the two parcels of 20 acres and 34.9 acres of land, purchased from the brothers Surís, and on other lands belonging to him; and when said lands were adjudged to them, Schulze & Co. leased from the two brothers Surís the 40 acres of the estate "Perseguida" or "Charity Hospital Estate" together with other lands belonging to the said brothers Surís and to the Misses Surís, which lease was made by means of contracts concluded by them; and that afterwards, when Schulze & Co., in 1889, executed a deed of consolidation of the plantation "Imiza," which they had acquired from the Succession of Stefani, they paid no attention to the boundary of the hospital tract, and by the description which, without said boundary, was made of the plantation "Imiza," the estate,

which is the property of the plaintiff, was inclosed within
53 said plantation; and under these circumstances the property "Imiza" of Schulze & Co., in liquidation, was, together with "La Perseguida," afterwards sold at auction by the Bank of Porto Rico and adjudged to the latter in the year 1905, being subsequently sold by said bank to Francisco Plácido Quiñones.

The allegations of the aforesaid complaint were denied by Quiñones and by the Bank of Porto Rico; and the former stated that he did not illegally possess lands of any one, but that he legally, in good faith, and by a just title, possessed the lands that he had purchased from the Bank of Porto Rico by a deed executed on November 1st, 1906; and as new matter he alleged that he possesses the lands purchased in good faith in the same good faith in which they were possessed by the Bank of Porto Rico and by Schulze & Co., from the time when they were adjudged to the latter in a suit prosecuted by them against the Succession of Stefani, by whom they were likewise possessed in the same manner (i. e., in good faith) for a long time prior to the year 1897, in which year he died; that José Salvador and Ramón Ma. Surís have always resided in San Germán at a short distance from the estate possessed by the defendant, and that said brothers always attended to the management of the lands of their sisters, Margarita and Cristina; that the plaintiff and his vendors have never possessed the property which they claim, nor have they rendered the same as belonging to them for the purposes of taxation, and that the municipal council of San Germán, about the year 1880, sold at auction 12 acres of the aforesaid property, notwithstanding which fact they said in the deed of consolidation that they possessed the 40 acres; that the plaintiff is a son of José Salvador Surís and a cousin of the other vendors, with all of whom
54 he maintains the most cordial and intimate relations; and, lastly, that from the time of Stefani up to the time of the defendant—that is, from before 1887—at which time the possession of the former commenced, all parties have possessed the lands which constitute the plantation "Imiza" as owners of the same, in a public and peaceful manner, without interruption, and by titles which were recorded in the registry of property; for which reason he alleges the ownership thereof by prescription.

As to the Bank of Porto Rico, said bank likewise denied the material facts of the complaint, and both prayed that said complaint be dismissed.

After having heard the evidence at the trial, the District Court of Mayaguez rendered judgment on May 7, 1909, declaring that the facts and the law were in favor of the defendants and dismissing the complaint with the costs against the plaintiff. From said judgment the latter took an appeal to the Supreme Court on the 26th of the same month, and a transcript of the record, with a statement of facts and written briefs, were filed in said Supreme Court by all the parties to the suit, who also made oral arguments at the hearing.

From the evidence introduced at the trial the history of the estate "Perseguida," of 40 acres of land, appears exactly as we have narrated the same at the beginning, and, likewise, other facts are narrated which occurred during the lapse of years comprised in said history.

Several years after the execution of the mortgage deed in favor of the Charity Hospital, which deed, as stated above, was executed on November 26, 1870—that is to say, about the year 1878—it
55 appears, according to a certificate issued by the municipal council of San Germán, that the brothers José Salvador and

Ramón María Surís owed more than 3,000 francs for taxes; and that, for the payment of the same, 12 acres of land which they possessed in the ward of Sabana Eneas were attached on June 15, 1878, and sold at auction and adjudged to the municipal council, which, in turn, sold the same soon afterwards to a third person. In the judicial proceedings which were instituted on account of said affair, José Salvador and Ramón Ma. Surís presented a writing requesting that the execution be levied upon other property because the lands that had been sold were mortgaged to the Charity Hospital; but said petition was dismissed.

From certificates issued by the same municipal council, it appears that, according to the documents relating to the assessment of taxes on agricultural properties and general taxes during the years from 1883 to 1900, there is no evidence in any of said fiscal years that any taxes were imposed upon Surís Hermanos, or José Surís, or Ramón Surís for the possession of the aforesaid 40 acres of land, nor have they rendered the latter in the Treasury of this Island for the payment of taxes from the year 1900 up to the present time.

One year after the public sale of the 12 acres above mentioned—that is to say, in March, 1879—Surís Hermanos declared themselves insolvent before the Court of First Instance at San Germán and surrendered their property in favor of their creditors, among whom they included the Charity Hospital; and in the statement of their property there figured as the only real property 100 acres of land in Sabana Eneas, which were bounded on the north by the plantation "Carolina"; on the south by the road leading to Cabo Rojo;
56 on the east by the lands of the Misses Surís, and on the west by the plantation "Carolina." A house of stone rubble-work and an engine house formed part of said real estate.

On July 8 of the same year the manager of the Charity Hospital instituted executory proceedings against José and Ramón Surís for the collection of the mortgage debt and the interest due thereon; and on the 11th of the same month and year an order for attachment and execution was issued by the judge, but the brothers Surís requested that said execution proceedings be joined with the bankruptcy proceedings, which request was refused by the Court of First Instance and granted by the Territorial Court on August 20, 1880.

The executory proceedings instituted by the hospital were again prosecuted, and on February 8, 1882, the two brothers Surís were required to pay, which they refused to do for the reason that inasmuch as no resolution had been passed to desist from the bankruptcy proceedings, and the attachment by which their property was encumbered had not been raised, they had no personal capacity to comply with the aforesaid requisition because they were in bankruptcy and had no property with which to pay.

In view of this answer, the bailiff on the following day, February 9, 1882, attached and delivered to Pablo Ma. Stefani, as a deposit, 100 acres of land which had the same boundaries as the land which, in the bankruptcy proceedings, had been declared by the aforesaid brothers Surís to be their property.

After this proceeding had been taken, the executory proceedings

were no longer prosecuted, nor was any order issued to the
57 Registrar of Property of San Germán for the entry of the attachment, which was ordered by a decree of the following day, February 10, 1882; but, on the same day on which the attachment was issued the following private document was executed, to-wit:

"Let it be known by this document that we, the undersigned, have agreed and stipulated as follows:

"First. Mr. José S. Surís and Mr. Ramón Surís are indebted to the hospital of this city in the amount of three thousand (3,000) dollars, Spanish currency, together with the interest due thereon for nine months and — days, and the costs caused by the executory proceedings that have been prosecuted, for the payment of which they have mortgaged forty acres of land which they possess in the ward of Sabana Eneas of this district.

"Second. Mr. Pablo Stefani purchases from the aforementioned Surís brothers the said forty acres for the sum of five thousand eight hundred dollars, it being understood that the Surís brothers are to execute the deed of conveyance in favor of the manager of the hospital for the amount of the principal and interest of the debt due to said institution according to the liquidation to be made.

"Third. The sum remaining of the aforesaid five thousand eight hundred dollars, after the balance resulting from the liquidation has been covered, shall be used by Stefani to pay five hun-
58 dred dollars for fees due to the attorney Font, and the other costs and fees that ought to be paid by Surís.

"Fourth. That Surís brothers likewise bind themselves to pay the taxes which are owing and for which the municipal council has adjudged to itself twenty acres of the lands of the plantation 'Cristina,' redeeming in this manner the aforesaid acres, which they sell from the present moment to said Stefani for the sum of one thousand eight hundred dollars, of which amount he shall pay one thousand dollars in cash as soon as the land is delivered to him, and eight hundred dollars within one year from the present date. And as evidence they sign, together with the witnesses who are present, two documents, the contents of which are identical, as security for the fulfilment of the foregoing agreement, it being agreed upon that Stefani shall pay the expenses of the deed and the other papers relating to the ownership of the property referred to. San Germán, 9th February, 1882.

(Signed) P. M. STEFANI.

Witnesses:
(Signed) PEDRO MA. ROSSY."

A few days later, on February 15, 1882, the two brothers Surís executed the deed of consolidation by which several parcels of land were united into one property under the name of "Perseguida," which property contained 40 acres of land, as was mentioned herein in the beginning.

On January 18, 1883—that is, one year after the attachment

was issued by the hospital, the execution of the private document and the consolidation of "La Perseguida"—the brothers
59 José Surís, Ramón Ma., and Epifanio Surís, sold by a public deed to Pablo Ma. Stefani two parcels of land, one of 20 acres and the other of 34.9 acres, which according to said document were bounded by lands of the Charity Hospital, the former being bounded by said lands on the south, and the latter on the west. Annexed to the aforesaid deed was a map which had been made by the land surveyor, Carlos B. Hernández, in March of the previous year, 1882, on which map the parcel No. 3, containing 40 acres, appears under the name "Hospital de Caridad"; and it was made to appear in the aforesaid deed that the parcels sold thereby were designated on said map by the numbers 2 and 11 respectively, number 2 being the parcel of 20 acres and number 11 the one containing 34.9 acres, and, likewise, that the aforesaid lands had been previously sold to Stefani but that the deed had not been executed on account of differences that had arisen, which had been settled by a private document executed on January 11, 1883, by which the brothers Surís had bound themselves to carry into effect the execution of the deed of sale, which they did in this act.

On the same day on which Stefani purchased those two parcels of land—that is, on January 18, 1883—Miss Cristina, Miss Virginia, Miss Luisa, and Miss Margarita Surís leased to Stefani 69 acres of land, which were marked with the number 9 on the map drawn by the land surveyor, Hernández, and which, among other lands adjacent thereto, were bounded on the south by the lands of the Charity Hospital.

Five years afterwards, in September, 1888, the mercantile firm of Schulze & Co. prosecuted a suit against the Succession of Pablo Ma. Stefani; and, in order to be able to record in the registry of property the attachment they had made of property belonging to said succession, the aforesaid firm instituted possessory
60 proceedings, which were approved and recorded in the same year.

In the petition by which those proceedings began, said firm stated that Stefani, and afterwards his succession, possessed, by virtue of full ownership, the plantation "Imiza" at Sabana Eneas, which consisted of 302.41 acres of land and was divided into four parcels, the first of which contained 281.97 acres, while the second contained 10.19, the third 7.25 and the fourth 3 acres. The first parcel of 281.97 acres was traversed from east to west by the road leading to Cabo Rojo and also by two local roads running from north to south; and said parcel was bounded on the north by lands belonging to the Misses Surís and the Succession of Báez; on the east by the properties of Santiago Sambolín, the Succession Martínez, and Jacinto Stefani; on the south by the lands of León Negrón, Ramón Gallego, Ulises Ramírez, Succession of Juan Angel Cruz, Josefa Sepúlveda, Sinforoso Quiñones, and Antonio López; and on the west by the properties of the Succession of Juan Antonio Cruz, Juan O'Neill, Ramón Camacho, the Succession of Feliciano Telésforo Vélez, Sinforoso Quiñones, and others.

That the area of these four parcels of land appears from the survey made at the time referred to, although it differs from the area stated in the tax lists, which difference arises from the fact that when said parcels of land were acquired they were said to have more or less the area above mentioned.

They stated, besides, that there were titles to the second parcel of 10.19 acres, but that there were none to the third and fourth parcels; and that in regard to the first parcel of 281.97 acres there were only titles to 123.15 acres, and that there were none to the
61 remaining 149.82 acres, which would be the subject of a report relating to the possession of the same by the petitioners.

In the statement of the different acquisitions of the aforesaid 149.82 acres of the first parcel, to which there was no title, it does not appear that any portion of the same with an area of 40 acres had been acquired from the brothers Surís.

The aforesaid possessory proceedings were recorded in the registry of property on October 13, 1888.

On May 5, 1899, Schulze & Co. executed a public instrument for the purpose of consolidating several landed properties into one estate under the name of "Plantation Imiza." In said instrument they first stated that in the executory proceedings prosecuted by them against the Succession of Stefani the property attached therein had been adjudged to them on February 9, 1899; that said property consisted of several parcels of land, one of which containing 25 acres was situated in the ward of Sabana Eneas, and was bounded on the south by lands of the Charity Hospital; another containing 34.8 acres was bounded by the same lands on the west; besides there was a parcel of 180 acres, and another of 170, all of which were recorded on February 28, 1889, which was the reason for the first inscription of the property No. 556; that this latter parcel after having been surveyed was found to contain 114.3 acres and formed the main portion of the plantation "Imiza," which contained the establishments for the production of sugar; while separated from this main portion, although belonging thereto, there were four other portions which, together with the first parcel, make a total of 276.23 acres of land constituting the plantation "Imiza," which area is
62 less than the area stated in the title deeds, because in the latter the number of acres was not accurately set forth, and also because part of the land had been sold.

After these antecedents had been stated, the main parcel of 192.3 acres was described as follows: Bounded on the north by lands belonging to José Roada, the Misses Surís and the Succession of Báez; on the south by the road of Cabo Rojo and a portion of land belonging to José Rabry; on the east by the property of Santiago Sambolín; and on the west by lands belonging to Schulze & Co., being separated by the road from the lands of Bartoli and the portion of land belonging to José Rabry, there being situate within the parcel of land just described two small portions of land belonging to Sinforoso Quiñones, one of four acres and another of two.

By this description of the parcel of 192.3 acres the 40 acres of the Charity Hospital or of "La Perseguida" marked with the

number 3 on the map of March, 1882, are included in said parcel of land.

This appears from the comparison which we have made of the aforesaid map with that of the plantation "Imiza," drawn by Pedro Viadé in 1907, as well as from the expert testimony of Mr. Tomasseti, who in view of those maps, of the deed of consolidation executed by Schulze & Co., and of the demarcation made by himself arrived at that conclusion.

The plantation "Imiza," of 276.23 acres, as described above, became the property of the Bank of Porto Rico by an adjudication made in favor of the same in the executory proceedings prosecuted by said bank against Schulze & Co., and was afterwards sold by the former to its present possessor, Francisco Plácido Quiñones.

63 The complaint alleges that in the year 1883 José S. and Ramón Ma. Surís leased to Stefani the parcel of land of 40 acres claimed therein, and later on to Schulze & Co. when the property of Stefani was adjudged to said firm. This was stated by José Salvador Surís at the trial, but his statement was contradicted by Federico Philippi, a former partner of the firm of Schulze & Co., who testified that he had had business transactions with José S. Surís and with his sisters, because in his transactions with the sisters of said José S. Surís the latter represented the same; that he had never leased any lands from the said José S. Surís, but that he had paid to him the rent due to his sisters, who were represented by him.

In an account covering the period from January 31, 1890, to October 8, 1891, which was sent by the firm of Schulze & Co. to José S. Surís, there appears an entry which reads as follows: "Lease of acres * * *," and a similar entry exists in another account covering the period from April 18, 1893, until October, 1894, which entry is as follows: "Lease S. Quiñones"; but on September 28, 1894, Schulze wrote José S. Surís, saying that as he had not been there again since he collected the amount of the last rent, he incloses the first contract, which he must return to him after having been signed by his sisters and by Ramón. But the most explanatory letter is one which has no date, and which reads as follows:

"FRIEND SURÍS: The receipt for the present month of May, which was presented to me, has already been paid. In the future, these receipts must be presented properly signed, for as long as you and I live there is no danger, but when we no longer exist there may arise questions; thus it is that you in future can give me proper receipts only when they are signed by the same persons who have

64 signed the deed of lease, and who are Virginia Surís, Cristina Surís, Margarita Surís, R. M. Surís, and who must also personally sign with the same signatures that appear on the aforesaid document, and not in the manner in which the receipt was signed the last time.

"I request you to make a note of this. Otherwise I shall not be able to pay any more receipts, because it is not in conformity with the law.

Yours, A. PHILIPPI."

In order to solve the conflict existing between these contradictory statements, it is well to make it appear that José Salvador Surís said in another part of his testimony that, notwithstanding the fact that he had stated to the municipal council of San Germán that the 12 acres of land which he had sold to said council formed part of the parcel of land mortgaged to the hospital, that was not true; and that he had only said so for the purpose of raising obstacles; and it must likewise be made to appear that he did not present any public or private document relating to the lease alleged by him, and that he did not introduce any evidence in regard to the lease to Stefani of the aforesaid 40 acres of land, with the exception of his own testimony to that effect.

José Salvador Surís, Ramón María Surís, and the heirs of the latter, as well as Juan Surís Cardona, son of the aforesaid José Salvador Surís, have always resided in the city of San Germán, at a very short distance from the property claimed in this suit, according to the testimony of the witnesses, Abelino Cruz, Gavino García, Francisco Morati, and others.

The legality of the private document of February 9, 1882, was proven by means of the testimony of the expert penmen, Alejandro Díaz and Maximino Cuevas, who, after comparing the signa-
65 tures appearing in said document with other undoubted signatures, testified and declared that the signature of J. S. Surís, which appears in the said private document, had been written by the same hand that wrote the undoubted signature; and the second of the aforesaid penmen made the same declaration with regard to the signature of Stefani and the witness Rossy.

Against the judgment which in the lower court terminated this suit the plaintiff has alleged two classes of errors, some of which refer to the procedure while the others have reference to the substantive rights applicable to the case. We will form a group of the former and consider the same before we proceed to the second class of errors.

Under the first group we can unite the errors assigned under the numbers 1, 8, and 9, which have been stated in the following manner:

1. The District Court of Mayaguez erred in not considering as proven in favor of the plaintiff the facts contained in the allegations 8, 10, and 16 of the amended complaint, which allegations were neither excepted to nor denied by the defendants.

In order to decide this first point, it is necessary to observe that the complaint was filed on September 11, 1907, on which day it was sworn to by the plaintiff; and that, after the same had been answered by the defendants, the plaintiff requested permission to amend the complaint, which permission was granted to him on May 4, 1908, and the plaintiff then amended his complaint, presenting on the 13th of the same month and year, not a new amended complaint, but a writing which contained the amendments to the complaint, which writing was not sworn to.

66 All this appears from the statement of the case approved by the judge notwithstanding the fact that in the judgment

roll the original complaint, with the amendments presented afterwards, appears to be redrawn in a single allegation as the amended complaint, and so it happens that said amended complaint bears the same date as the original one, without containing any other affidavit than that of September 11, 1907, which is the affidavit of the original complaint. In short, the amendments were not sworn to.

In the eighth original allegation it was asserted that the 40 acres of land claimed in this suit have never been and are not now the property of the hospital, which never had possessed any lands that were recorded in the registry of property; and it was further stated in said allegation that the property claimed belonged to the brothers Surís each of them possessing one-half thereof, and that by the death of Ramón María Surís the latter's half of said property had been inherited by his heirs, and that Juan Surís Cardona was at present the owner of the entire property by virtue of the purchase of the same for the price of $5,500, according to the deeds of July 14 and 22, 1907, recorded in the registry of property, in which the said property is described in accordance with the present condition of the same. And upon describing the aforesaid landed property, the amendment adds to the properties, by which the same is bounded, the plantation "Imiza" on the south.

The tenth original allegation states that Stefani mortgaged to Schulze & Co. a parcel of 20 acres of land and another of 24.9 acres during the years 1886 and 1887; that after the death of
67 Stefani the aforesaid firm prosecuted executory proceedings against his succession, in which, among other properties, the aforesaid parcels of land of 20 acres and 24.9 acres were adjudged to said firm, which took possession thereof.

The amendment to this allegation consisted in adding thereto that, during the prosecution of the aforesaid executory proceedings, Schulze & Co. instituted possessory proceedings in order to record the properties of Stefani, in which proceedings the property of 40 acres of land does not figure, which property is the subject of these possessory proceedings, which were approved and recorded in the name of Stefani and afterwards in that of Schulze & Co.

The sixteenth original allegation states that according to the deed of consolidation executed by Schulze & Co. in 1889, the properties of 20 acres and 24.9 acres were adjacent to lands of the Charity Hospital; and with the aforesaid parcels and other portions said properties formed the parcel of 192.3 acres, which at the time of the consolidation was bounded on the south and on the west by the lands of the Charity Hospital, but that on consolidating the said properties Schulze & Co. omitted the aforesaid boundary, substituting therefor that of the plantation "Imiza," and that in this manner the 40 acres of land which were called the hospital lands were inclosed in the property above mentioned, although for this reason they were not recorded in the registry of property.

This allegation was amended so as to eliminate the portion in which it was said that the property which is the subject of this suit had been inclosed in the consolidated property in consequence of the

substitution of boundaries, and to state in lieu thereof that the
68 parcel of 192.3 acres could not be consolidated, because as the same was formed among others by two portions of land which were bounded, and are bounded, by lands of the Charity Hospital the said portions were not adjacent and are not all adjacent to each other, because they were and are separated by the lands of the hospital; but that Schulze & Co., in order unduly to consolidate the portions of 20 acres and those of 24, 114, 10, and 14 acres and thus to form a parcel of land of 192.3 acres, maliciously omitted the boundary of the hospital lands and substituted therefor that of the plantation "Imiza"; and by such illegal and fraudulent omission or substitution the lands of the hospital were inclosed within the parcel of 192.3 acres, or within some of the portions of land comprised in the perimeter of the plantation "Imiza," although in consequence of this the property claimed was not recorded in the registry of property in the name of Schulze & Co.

From the aforesaid it will be seen that the amendment to the eighth allegation consisted exclusively in the addition of a boundary to those set forth in the description of the property, and although this amendment is true, it must not be held for this reason that the entire allegation was true.

The amendment to the tenth allegation does not essentially modify the original allegation which had been denied; and as regards the sixteenth allegation, the greater part of the amendment consists of considerations and views of the plaintiff as a consequence of the statements made by him in the original allegation.

Since none of these three amendments alleged any fact essential to the suit, the non-denial of the same does not imply that
69 the court must consider the same to be true, and much less that for lack of denial of the same, even supposing that they contained essential facts, the remaining particulars stated in the original complaint which had been denied must be considered as true and proven; for which reason the court did not commit the error of which complaint is made.

Error VIII. The inferior court erred in not considering as insufficient both the answer of the Bank of Porto Rico and the answer containing the new matter of defense of the defendant, Francisco Plácido Quiñones.

We have stated in the beginning what the essential facts of the complaint are; we said that they had been denied by the Bank of Porto Rico and by Francisco Plácido Quiñones, and we stated likewise the facts which the latter alleged as new matter of defense to the complaint.

As a ground of the assignment of error, the plaintiff and appellant maintains that the answers do not conform to law, because the Bank of Porto Rico denies, upon information and belief, the facts alleged in the complaint, which appear in public documents duly filed, some of which facts relate to the documents constituting the title to the plantation "Imiza," of which the aforesaid bank has been the owner; and that with regard to said facts the answer of the bank and that of Quiñones are evasive, because they could have ex-

amined those documents before denying their contents or admitting the same.

The manner of denying a sworn complaint, in order that said denial may constitute a defense or opposition thereto, is positive when the facts are a matter of personal knowledge of the defendant, or upon information or belief when they are not known to him.

If the facts appear in written documents which were executed by the defendant, only a positive answer will avail, because
70 presumptively the facts appearing therein are a matter of his personal knowledge; but if he did not intervene in said documents, then, for the reason that the said facts are not within his personal knowledge, he may answer upon information and belief. See Curtis v. Richards & Vantine, 9 Cal. 33.

In the present case the facts denied upon information and belief all relate to facts in which the defendants did not personally intervene, although said facts appear in public documents; and the defendants are not obliged by virtue of a sworn complaint to go from one set of archives to another in order to examine those documents. If the doctrine which the appellant tries to establish were admitted, the defendant would be obliged, in the case of public documents, to examine all the archives in any part of the world, wherever the document might be.

It is true that some of the allegations referred to in the assignment of the alleged errors have reference to the documents constituting the title to the plantation "Imiza," which at the present time is the property of Mr. Quiñones and formerly belonged to the Bank of Porto Rico; but, although they are particulars relating to those documents, they do not appear in documents in which the defendants have personally intervened, but in previous documents.

It is also alleged that the denial of a certain allegation of the complaint—that is, allegation 21—is null and void, because the latter does not contain a fact but a conclusion of law, which it was not necessary to deny; it being likewise alleged that another allegation, which was also denied, is only a note of the documentary evidence of which the plaintiff intends to avail himself at the trial.

71 This being so, the defendants were under no obligation to deny those allegations, and the fact that they have denied the same does not annul their answer, nor does it render the latter defective, if by having properly denied the material facts of the complaint it constitutes a defense thereto. It is only necessary to deny the material allegations of the complaint.

It is likewise alleged that certain allegations of the complaint, to wit, those marked with the numbers 17 and 18, have been insufficiently denied by the Bank of Porto Rico, because the bank does not deny each fact stated in said allegations, but admits some of them and contradicts others.

The answer of the Bank of Porto Rico with regard to the seventeenth allegation was to the effect that it acknowledges as true the facts set forth in the first sentence thereof up to the point where it reads, "Allegation 15," and denies all the other facts stated therein. In regard to the eighteenth allegation, said bank acknowledged as

true the facts set forth in the first paragraph thereof, and denied the rest. When an allegation is complex, comprising several clauses or propositions, each part of a proposition must be denied separately, as it is not sufficient that the propositions be generally denied. More v. Del Valle et al., 28 Cal. 170. Applying the doctrine, we find the answer of the Bank of Porto Rico to these two allegations to be correct, because it distinguished the part which was true from the part which was not true. In view of the aforesaid propositions we find that the court has not committed the error imputed to it in this paragraph of the assignments.

Error IX. An answer which does not allege sufficient facts to constitute an opposition or defense to the complaint is null and void and must be dismissed.

72 This assignment of error is based on the allegation that the denials contained in the answers are evasive, defective, and insufficient, and that the new matter adduced by the defendant Quiñones is not really new matter, inasmuch as it is immaterial, inconsistent, and redundant, for which reason said answers cannot be taken into consideration by the court, according to section 123 of the Code of Civil Procedure, which reads as follows:

"Sham and irrelevant answers, and irrelevant and redundant matter inserted in a pleading, may be stricken out upon such terms as the court may, in its discretion, impose."

We have already said that the answers of the Bank of Porto Rico and that of the other defendant, Quiñones, are sufficient and in accordance with the law of procedure; therefore we have now only to examine whether the new matter adduced by Quiñones constituted a defense to the complaint.

The landed property, "Perseguida," consisting of 40 acres of land, is claimed from Mr. Quiñones, which property is alleged to be comprised in and inclosed by the plantation "Imiza" belonging to him; and if that is true, then the matter which is adduced by said Quiñones as new matter is pertinent, for it is, in substance, an allegation limited to the following facts: that the aforesaid Quiñones possesses the plantation "Imiza" by virtue of a just title of purchase in the same manner as it was possessed by the Bano of Porto Rico, by Schulze & Co., who possessed said plantation prior to its possession by the bank, and by Pablo Ma. Stefani, who was the first possessor thereof; which facts are stated in order to allege the prescription of the ownership that might exist against the plaintiff. By the

73 aforesaid statement alone it is shown that the error alleged does not exist.

Having thus decided the questions involved in the assignment of error affecting the procedure, we will now enter upon an examination of the other group of errors, which are of a substantive character. The second assignment of error reads as follows: "The district court erred in not considering as proven in favor of the plaintiff and against the defendants the facts referring to the title of ownership of the plaintiff, and the inscription of said title in the registry of property." The ground of this assignment of error is that the plaintiff at the trial introduced as evidence the deeds relating to the 17 por-

tions of land which, consolidated into one property, form the estate called "Perseguida," containing 40 acres of land (the plaintiff presented only 16 deeds); the deed of consolidation of the same executed by José Surís and Ramón Ma. Surís; the certificate showing that said deed was presented in the registry of property in the name of the gentlemen who executed the same; a certificate showing that the undivided half of the aforesaid estate belonging to Ramón María Surís had been recorded in the same registry in favor of his heirs; the deeds by which José S. Surís and the heirs of Ramón Ma. Surís sell the aforesaid property to Juan Surís Cardona, with a note proving that the same have been recorded in the registry of property, and that it is alleged that since the aforesaid documents have not been impugned as false or null and void the plaintiff has proven his title to the property claimed by him, and that the lower court, by not holding that said title had been proven, had infringed the doctrine of the Supreme Court of Spain and that laid down by the Supreme Court of Porto Rico in the case of Verges et al. v. Domingo
74 Pietri et al. (9 P. R. R. 20), which doctrine is to the effect that in order that a party may avail himself of an action for recovery the existence of a true title to the thing which is the subject of the recovery is necessarily required.

This doctrine is correct; but the fact that the lower court has rendered judgment against the plaintiff does not necessarily lead to the conclusion that it has failed to apply said doctrine, inasmuch as said court may have held that Juan Surís Cardona had purchased the property to which his title referred and that, nevertheless, there may have been some legal ground on account of which he was prevented from recovering the same as, for instance, if the defendant Quiñones had acquired said property by prescription in view of other evidence introduced at the trial.

Error III has been imputed to the court, for the reason that the latter did not consider as proven in favor of the plaintiff the facts showing the identity of the landed property claimed in the complaint.

In regard to this error, we say the same as we have said with reference to the preceding one.

In view of all the evidence, we think—and perhaps the lower court was also of the same opinion—that the property which the brothers Surís mortgaged to the Charity Hospital, which property consisted of 40 acres and was formed by 16 parcels of land which afterwards were consolidated into a single property and recorded in the registry of property by the aforesaid brothers Surís who later on sold the same to the plaintiff herein, is included within the area of the present plantation "Imiza" of the defendant Quiñones; but this fact alone does not necessarily lead to the conclusion that judgment must be rendered in favor of the plaintiff.

75 The fourth error is alleged to consist in the matter that the court did not consider as proven in favor of the plaintiff the facts showing the possession which the defendant Quiñones has of the lands in litigation, whereby said court infringed section 355 of the Revised Civil Code, which provides that an action for re-

covery must be directed against the party who possesses the property to be recovered or who retains or detains the same. We do not believe that the error alleged has been committed; and what we have said in regard to the two preceding assignments of error is also applicable to the present one.

The fifth error assigned will be discussed at the end of this opinion after we have examined all the other errors, on account of the nature of the same.

The real question to be decided in this suit is contained in the sixth, seventh, and tenth assignments of error, which we will discuss together; but before doing so and as a consequence of what we have said, we wish to state that in our opinion it has been proven that 16 of the 17 parcels of land which, during the years from 1860 to 1870 ,were purchased from different persons by the brothers Surís, were mortgaged by the latter to the Charity Hospital, according to the boundaries stated in the mortgage deed; that they were the same parcels which afterwards, together with another parcel, 17 in all, were consolidated into a single property in 1882 and recorded in the registry of property; that they are the same that were purchased by the plaintiff, as stated in his deed, and that they are included in the plantation "Imiza," which is the property of the defendant Quiñones, who purchased the same from the Bank of Porto Rico, which, in turn, had acquired said plantation from Schulze &
76 Co., who had derived it from the Succession of Pablo Stefani.

Now let us see whether, notwithstanding this, some fact has occurred which prevents Francisco Surís Cardona, the plaintiff herein, from recovering the aforesaid estate. During the trial a private document dated February 9, 1882, was introduced; and it is alleged that by admitting the same the court committed an error, which is marked with the number VII. As a reason why it should not have been admitted, it is said by the appellant in the first place that the aforesaid document is false; in the second place that it is null and void; in the third place that it is ineffectual against a third party; and in the fourth place that the actions originating therein have prescribed.

Upon admitting said document the judge of the lower court held that it was not false in view of the evidence introduced in regard to the authenticity of the same; and as it has neither been alleged nor shown that he acted under the influence of passion, prejudice, or partiality, or that he committed a serious error in the consideration of the evidence relating to this point, we will not disturb the conclusion at which he arrived, especially as we have carefully examined the evidence referred to, and we have no doubt whatever in regard to the genuineness of the aforesaid document, for the reason that the signatures written at the end of the same are authentic.

The whole argument of the appellant concerning the nullity of said private document is based on the allegation that Stefani acted as attorney in fact of the Charity Hospital and was not authorized to give his consent in the name of said hospital, and that the document referred to is not signed by two witnesses.

77 The first point is based on the erroneous supposition that Stefani purchased the property in question for the hospital and that he acted as attorney in fact of the latter since the statement that the deed was executed in favor of said institution is not sufficient to warrant that conclusion. According to the text of the document, Stefani is the purchaser and also the one who pays the price and the arrangement that the deed be executed in favor of the hospital may indicate the existence of another contract between him and the aforesaid creditor, but not that the latter purchases the property directly from the brothers Surís by means of the representation of Stefani.

With regard to the allegation that the lack of the signatures of two witnesses in the document referred to makes the latter null and void, we must say that from the time of the Novísima Recopilación, Law I, Title I, Book I, a man is bound in whatever manner he may be willing to bind himself, and therefore the obligation is not rendered ineffectual through the lack of external requisites. Besides, the quotation made by the appellant of Law LXI, Title XVIII, Partida III, has reference to the requisites of public documents which are also required by our law concerning notaries public and the Mortgage Law and is not applicable to a private document, for which no law prescribes such a requisite.

But it is further asserted that at all events the private document is ineffectual to prejudice a third party; and that if the said private contract is neither false nor null and void, then this would be a case of a double sale of the same property. In order to discuss this question, it is necesasry to make it appear that José S. Surís while testifying stated that he carried on a friendly intercourse with his

78 son, Juan Surís Cardona, who according to his statement has no capital or fortune whatsoever, although he possesses some property and formerly had a house which he had built, but nothing more; and that this witness, who testifies minutely in regard to facts which occurred during a period of 30 years, who even remembers many of the owners of the properties that were adjacent to the lands or estates purchased by him during those times, does not remember the price for which the landed property claimed in this suit was sold by him and his nephews to the plaintiff herein.

We will also state that a few months before the sale was made to Juan Surís Cardona his father intended to render the landed property in question for the purposes of taxation, and for this work, and for his representative in this affair, he engaged an attorney who is the same who at present defends the plaintiff; and this attorney wrote a letter to Mr. Tomassetti requesting the latter to inform him in what part of the plantation "Imiza" the property in litigation was situated before attesting as notary public the deeds of purchase executed in favor of the plaintiff; and we must call to recollection, as we have said before, that Juan Surís Cardona and his vendors have always lived at San Germán and entertained a friendly intercourse with each other.

It is certainly very strange that a son should allege that what his father sold to him he had also sold before to another person, and

that he should endeavor to uphold the sale made to him to the prejudice of the other person who made the transaction with his father by availing himself of the protection afforded by the provisions of the law which, in such cases, protect the party who was the first in recording his title.

79 In view of the manner in which the facts have occurred, we have no doubt whatever that the deeds of sale of the property in question executed in favor of Juan Surís Cardona have had no other purpose than that he should institute this suit to avail himself of and assert his rights as a third party and thus save his father and the heirs of his uncle from the consequences of the private document executed in favor of Stefani; and we are likewise convinced that the plaintiff knew the history of the said property before he made his purchase, and that his father and his cousins had not possessed the same since 1882, as stated in the complaint.

Under such conditions the plaintiff cannot claim the benefits which the law grants to third parties, because nobody can be a third party who, although he had not intervened in the first contract of sale, purchased, however, knowing that his vendors were not the owners and had no possession of the property sold. The same doctrine has already been established by this court in the case of Voight v. Ribas (1 Decisiones de Puerto Rico, 60), decided May 10, 1900.

Besides, the defendant recorded before the plaintiff the landed property which is the subject of the complaint, for the plantation "Imiza" within which, according to the assertion of the plaintiff, is comprised the property which he claims by virtue of the consolidation made by Schulze & Co., was recorded in the registry of property prior to the inscription of the deeds of purchase executed in favor of the plaintiff.

The allegation of the appellant that the price of the sale depended upon a liquidation, and that, therefore, so long as
80 said liquidation had not been made the sale did not exist, is not true, for it clearly appears from the context of the document above mentioned that Stefani purchased the property for the sum of $5,800, with which he was to pay the debt due, together with the interest and the costs. And that the purchaser Stefani made the payment is shown by the fact that he ordered that the deed be delivered to the hospital, doubtless while the payment was being made, and that it has neither been alleged nor proven that the brothers Surís had to pay those amounts which represented the $5,800 of the purchase price. The purchase money had been delivered from the moment when Stefani accepted as his own the liabilities of the brothers Surís.

It is useless to determine whether the actions originating in the private contract have prescribed, because the property sold and the price thereof having been delivered, there is no longer any reason for instituting those actions nor for executing any deed, for the property in question is recorded by virtue of the inscription made of the consolidated estate "Imiza," nor are those actions now instituted. In short, the private contract of purchase and sale between the brothers Surís and Stefani is a legitimate contract; it is lawful

and has produced the effect of conveying to the purchaser the ownership of the property claimed, and affects the plaintiff by reason of the circumstances which he knew when he acquired the property referred to.

Although objections were made to the admission of the private document, said objections were based only on the ground that the signatures were false, and, therefore, as it was shown that those signatures were not false, all other objections were aban-
81 doned. The People of Porto Rico v. Silva, decided May 18, 1911, and Falero v. Falero, decided February 19, 1909, both of which decisions were rendered by this court.

Consequently, on February 9, 1882, the brothers Surís ceased to be the owners of the property which is the subject of the aforesaid private document, and from that time said property has been publicly, quietly, and peacefuly possessed by Stefani, afterwards by Schulze & Co., who consolidated the same with other lands belonging to them and recorded said property with the plantation "Imiza"; later on it was possessed by the Bank of Porto Rico, and, lastly, by Quiñones, so that more than 10 years have elapsed since said possession commenced, which among present parties is a title sufficient to acquire the ownership by prescription, if there exists, as does in the present case, a just title of purchase made in good faith.

Wherefore, the judgment which in view of all the antecedents hereinbefore stated was rendered by the District Court of Mayaguez was consistent with the pleadings and the evidence, and it is unnecessary to discuss the claim relating to the products of the property referred to.

For the reasons stated the appeal should be dismissed and the judgment from which this appeal is taken should be affirmed.

Affirmed.

82 In the Supreme Court of Porto Rico.

No. 439.

JUAN SURÍS CARDONA, Plaintiff and Appellant,
vs.
FRANCISCO P. QUIÑONES et al., Defendants and Respondents.

Appeal from a Judgment Rendered in Favor of Defendants by the District Court of Mayaguez.

Judgment.

SAN JUAN, PORTO RICO, 25th of May, 1911.

This court has carefully examined the transcript of record filed in this case for the purpose of the appeal taken in the above entitled case and considered the statements made by the parties in support of their contentions; and for the reason stated in the Opinion of the Court which is attached to this Judgment the judgment ren-

dered by the District Court of Mayaguez on the 7th of May, 1909, is hereby affirmed. Let the lower court be informed.

Thus it was pronounced, commanded and signed.

(Signed) JOSÉ C. HERNANDEZ.
J. H. MacLEARY.
ADOLPH G. WOLF.
EMILIO DEL TORO.

I, José Hernández Usera, Secretary of the Supreme Court of Porto Rico, certify: That the foregoing opinion and judgment are true copies of their originals, and to include them in the proper record, I issue this in San Juan, Porto Rico on the 19th day of July, 1911.

(Signed) J. HERNÁNDEZ USERA,
Secretary of the Supreme Court.

83 In the Supreme Court of Porto Rico.

Number 439.

JUAN SURÍS CARDONA
vs.
FRANCISCO P. QUIÑONES and THE BANK OF PORTO RICO.

Petition of Appeal.

The plaintiff and appellant in the above cause, Juan Suris Cardona, conceiving himself to be aggrieved by the decision and judgment of this Court in said cause entered on the 25th day of May, 1911, whereby the judgment of the District Court for the Judicial District of Mayaguez was affirmed, does hereby appeal from the decision and judgment of this Court aforesaid to the Supreme Court of the United States for reasons to be specified in an assignment of errors to be filed herein, and he prays that this petition of appeal may be allowed, that this court may prepare a statement of facts in the nature of a special verdict to be made a part of the record on this appeal, and that a transcript of the record and proceedings of the District Court aforesaid and of this Court, together with said statement of facts, duly authenticated, may be sent to said Supreme Court of the United States as provided by law.

San Juan, P. R., this 23rd of May, 1913.

(Signed) HUGH R. FRANCIS,
FERNANDO VÁZQUEZ,
Counsel for Appellant.

84 In the Supreme Court of Porto Rico.

Number 439.

JUAN SURIS CARDONA, Plaintiff-Appellant,
vs.
FRANCISCO P. QUIÑONES and EL BANCO DE PUERTO RICO, Defendants and Appellees.

Assignment of Errors.

No- comes Juan Suris Cardona, appellant and makes and files this his assignment of errors.

1. The Supreme Court of Porto Rico erred in confirming the judgment of the District Court of Mayaguez.

2. The Supreme Court of Porto Rico and the District Court of Mayaguez erred in not rendering judgment on the pleadings in favor of the appellant and plaintiff in error.

3. The Supreme Court of Porto Rico and the District Court of Mayaguez erred in not finding in favor of the plaintiff the facts alleged in paragraphs eight (8), ten (10) and sixteen (16) of the complaint as amended.

4. The Supreme Court of Porto Rico erred in finding that the District Court of Mayaguez admitted in proof as a true document the private document dated February 9, 1882, set forth in the statement of facts in the nature of a special verdict.

5. The Supreme Court of Porto Rico erred in not sustaining the seventh error assigned in the appeal to said Court from the District Court of Mayaguez, to wit, that the District Court of Mayaguez erred in admitting as proof the private document dated February 9, 1882, presented by the defendant, El Banco de Puerto Rico, which said admission by the court was made in the following terms:

"The court now admits the private document presented by counsel for the Bank, not as a genuine document but as a document against which the other party has presented opposition, and in support of which the party who offered it has presented evidence, the validity of which document is submitted to the court."

85 6. The Supreme Court of Porto Rico erred in giving any legal effect whatsoever to the mentioned private document dated February 9, 1882, as against the plaintiff and his predecessors in title, with respect to the lands in controversy.

7. The Supreme Court of Porto Rico erred in not finding that any rights or actions originating in the said private document, dated February 9, 1882, had prescribed at the time of the establishment of this action.

8. The Supreme Court of Porto Rico erred in giving effect to said private document dated February 9, 1882, as against the public deed in favor of the plaintiff inscribed in the Registry of Property.

9. The Supreme Court of Porto Rico erred in holding the said

private document dated February 9, 1882, to be a legitimate and valid document.

10. The Supreme Court of Porto Rico erred in holding that the defendants had acquired title to the lands in controversy by force of prescription.

11. The Supreme Court of Porto Rico erred in holding Juan Suris Cardona not to be third party (tercero) within the meaning of the mortgage law of Porto Rico with respect to the titles of the lands in controversy.

12. The Supreme Court of Porto Rico erred in not revoking the judgment of the District Court of Mayaguez and in not ordering the delivery to the plaintiff of the possession of the lands in controversy, and the payment to the plaintiff of the value of the fruits which said lands have produced from the date of the presentation of the complaint to the date of said delivery of possession.

13. The Supreme Court of Porto Rico erred in holding that Pablo María Estefani inscribed in his name in the Registry of Property the lands in controversy.

Wherefore the appellant and plaintiff Juan Suris Cardona, prays that the judgment of the Supreme Court of Porto Rico in the above entitled cause, be reversed, and that said Juan Suris Cardona have an adjudication in his favor as herein specified and that said cause be remanded for such further proceedings as may be determined upon by this Honorable Court.

(Signed) HUGH R. FRANCIS,
FERNANDO VÁZQUEZ,
Att'y- for Appellant and Plaintiff in Error.

86. In the Supreme Court of Porto Rico.

No. 439.

JUAN SURIS CARDONA, Plaintiff and Appellant,
vs.
FRANCISCO P. QUIÑONES and THE BANCO DE PUERTO RICO, Defendants and Respondents.

On Appeal to the Supreme Court of the United States.

Order.

SAN JUAN, PORTO RICO, 26 May, 1913.

The appeal taken by the attorneys Hugh R. Francis and Fernando Vázquez in behalf of the plaintiff to the Supreme Court of the United States from the judgment of this Court of the 25th of May, 1911, is hereby admitted; the bond to be furnished by said appellant is hereby fixed in the sum of one thousand dollars to answer for the costs that said appeal may cause the adverse party; the term of sixty days is granted to said appellant for the preparation and translation of the record to be sent up to the Supreme Court of

the United States; and as to the motion made by the appellant on the 24th instant wherein he prays for the approval of the draft statement of facts in the form of a special verdict the appellant is ordered to serve a copy of the said document on the respondents Francisco P. Quiñones and El Banco de Puerto Rico to the end that they present to this Court within the period of fifteen days from the date of the service of the copy the objections and amendments that they may deem proper to make or file a new draft statement of the case in the manner of a special verdict.

It was so decided and signed by the Justices of the Supreme Court.

(Signed) JOSÉ C. HERNÁNDEZ.
ADOLPH G. WOLF.
EMILO DEL TORO.
PEDRO DE ALDREY.

87 In the Supreme Court of Porto Rico.

No. 439.

JUAN SURIS CARDONA, Plaintiff and Appellant,
v.
FRANCISCO P. QUIÑONES and EL BANCO DE PUERTO RICO, Defendants and Respondents.

Appeal from the District Court of Mayaguez.

On Appeal to the Supreme Court of the United States.

Statement of Facts in the Nature of a Special Verdict.

SAN JUAN, PORTO RICO, February 6, 1914.

Be it Remembered: That the issue in this suit was tried before the District Court of Mayaguez and that the statement of the case, attested by the said court and submitted to this tribunal, contains evidence ending to show the facts hereinafter stated which substantially constitute the findings of fact on which this court based its judgment affirming the judgment of the district court.

1. That the brothers José Salvador and Ramón María Suris purchased from various persons during the years from 1860 to 1870 seventeen parcels of land situated in the ward of Sabana Eneas of San Germán and that on November 26, 1870, they executed a mortgage in favor of the Charity Hospital of San German on 40 cuerdas of land which, as they said, formed a part of 70 cuerdas which they had and possessed in the ward of Sabana Eneas, proving their title of ownership to the mortgaged land by a certificate issued during the preceding month by Surveyor Hernández and by deeds of purchase of 16 of the 17 parcels before mentioned.

2. That on July 8, 1879, the manager of the Charity Hospital

instituted summary foreclosure proceedings against José and
88 Ramón María Suris for the recovery of the said mortgage debt and interest thereon, and the suit having been stayed by reason of an appeal taken to the Territorial Audiencia it was taken up again on February 8, 1882, and on the following day a property of 100 cuerdas belonging to the brothers José Salvador and Ramón María Suris was attached and placed in the custody of Pablo María Stefani. On the same day the attachment was levied a private instrument was executed reading literally as follows:

"This instrument witnesseth: That the undersigned have agreed and stipulated the following:

"1. That José S. Suris and Ramón Suris are indebted to the hospital of this city in the sum of $3,000, Spanish money, with interest due thereon for 9 months and some days, together with the costs incurred in the foreclosure proceedings, for the payment of which they have created a mortgage on forty cuerdas of land owned by them in the ward of Sabana Eneas of this district.

"2. Pablo Stefani purchases from the aforesaid Suris Brothers the said forty cuerdas of land for the sum of $5,800, it being understood that the Suris brothers shall execute a title deed to the property to the manager of the hospital for the amount of the principal and interest due to the said hospital according to the accounting to be made.

"3. When the amount shown by the accounting has been paid the remainder of the said sum of $5,800 shall be applied by Stefani to the settlement of $500 as fees due to Attorney Font and other costs and fees owing by Suris.

"4. The brothers Suris also bind themselves to pay the taxes which are due and for which the municipality seized twenty cuerdas of land of the plantation 'Cristina' thus redeeming the said twenty cuerdas which they hereby sell to Stefani for the sum of
89 $1,800, of which amount $1,000 shall be paid in cash by Stefani as soon as the land is delivered to him and $800 within one year from this date.

"In witness whereof, the parties hereto sign this instrument in duplicate in the presence of witnesses, it being understood that Stefani shall pay the expenses of drawing up the deeds.

"San Germán, February 9, 1882.

(Signed) J. S. SURIS.
(Signed) R. M. SURIS.
(Signed) P. M. STEFANI.

Witness:
PEDRO MA. ROSSY."

3. Some days afterwards, or on February 15, 1882, the brothers Suris executed a deed of consolidation of the 17 parcels of land referred to and formed one single property therewith composed of 40 cuerdas of land which they named "Perseguida" and which they described as follows: Bounded on the north and west by the plantation "Carolina"; on the south by the Cabo Rojo road, and on the east by other lands belonging to the brothers Suris. This consolidation was recorded in the registry of property.

4. In the year 1888 the mercantile firm of Schulze & Company brought a suit against the Succession of Pablo María Stefani, and in order to be able to record in the registry of property the attachment which they levied on the property belonging to said succession, the said firm instituted possessory title proceedings for the properties of the succession, which proceedings were approved and recorded in the registry on April 13, 1888. One year later Schulze & Company executed a deed of consolidation of several properties under the name of "Imiza" in which was included the property of 40 cuerdas of the hospital, or "Perseguida." In said deed the firm stated that in the foreclosure proceedings prosecuted by them against the Succession of Stefani the properties which they had attached were adjudicated to them on February 9, 1899, and in the
90 description of one of the lots of the plantation "Imiza" of 192.30 cuerdas was included the parcel of 40 cuerdas called "Hospital" or "Perseguida" which has been referred to.

5. The plantation "Imiza" was acquired by the Banco de Puerto Rico on August 14, 1905, by virtue of a deed of sale from the marshal of the District Court of Mayaguez to the said bank in proceedings to foreclose a voluntary mortgage executed by Schulze & Company, in liquidation, in favor of the said bank. On November 19, 1906, the bank sold the said plantation to Francisco P. Quiñones who recorded it in his name in the registry of property.

6. After the death of Ramón María Suris in the year 1900 his heirs recorded in his name in the registry of property his joint ownership of an undivided half of the property called "Perseguida," and subsequently, in July, 1907, they and José Salvador Suris sold the property to Juan Suris Cardona who also recorded it in the registry.

7. The private document transcribed in No. 2 is genuine and signed by the brothers Suris and by it they sold to Pablo Stefani the 40 cuerdas which the plaintiff seeks to recover in this action.

8. Defendant Francisco P. Quiñones recorded in the registry the purchase made by him from the Banco de Puerto Rico of the property of 40 cuerdas of the hospital, or "Perseguida," before plaintiff Suris Cardona recorded the sale of the same property made to him by his father, José Salvador Suris, and the children and heirs of Ramón María Suris.

9. From 1882 the property sued for ceased to belong to the brothers José Salvador and Ramón Maria Suris by reason of the sale set out in the private contract, and since then it has been
91 in the quiet, peaceful and public possession, as owners, in good faith and by title of purchase of Stefani, later of Schulze & Company, then of the Banco de Puerto Rico, and finally of Quiñones, residents of Porto Rico.

10. When the plaintiff purchased the property sought to be recovered he knew the history of it as here related and knew that his father and cousins had not possessed the same since the year 1882.

In witness whereof we sign the present document in San Juan, Porto Rico, this 6th day of February, 1914.

(Sd.) JOSÉ C. HERNANDEZ.
ADOLPH G. WOLF.
EMILIO DEL TORO.

92 In the Supreme Court of Porto Rico.

JUAN SURIS CARDONA, Plaintiff and Appellant,
v.
FRANCISCO P. QUIÑONES and THE BANCO DE PUERTO RICO, Defendants and Respondents.

Appeal from the District Court of Mayaguez.

On Appeal to the Supreme Court of the United States.

The undersigned, Fernando Vazquez, makes oath and says:
1. That he is one of the attorneys for the plaintiff-appellant Juan Suris Cardona in the above entitled action.
2. That the lands in controversy in this action were acquired by Juan Surís Cardona for the sum of five thousand five hundred dollars, under and by virtue of public deeds included in the record.
3. That Juan Surís Cardona further claims two thousand dollars for losses and damages sustained by reason of the defendants' unlawful detention of the lands and an indemnity for damages incurred by him from the date of the filing of the complaint up to the final delivery to him of the property claimed.
4. That the amount claimed by Juan Surís Cardona in this action exceeds five thousand dollars, without including interests or costs.
Humacao, P. R., February 14, 1914.
(Sd.) FERNANDO VÁZQUEZ.

No. 333.

Subscribed and sworn to before me by Fernando Vázquez, of age, resident of this city, married, and personally known to me, in Humacao, this 14th day of February, 1914.
(Sd.) FRANCISCO GONZALEZ,
Notary Public.

93 In the Supreme Court of Porto Rico.

Civil Case No. —.

JUAN SURIS CARDONA, Appellant,
vs.
FRANCISCO P. QUIÑONES and the BANK OF PORTO RICO.

Reivindication.

Bond.

Know all men by these presents, That We, Juan Suris Cardona as principal, and Andrés Orsini and Fernando Vazquez as sureties, are held and firmly bound unto Francisco P. Quiñones and El Banco de

Puerto Rico, in the full and just sum of One Thousand Dollars, ($1,000.00) to be paid to said Francisco Quiñones and El Banco de Puerto Rico, its certain attorneys, executors and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 2nd day of August, A. D. in the year of Our Lord, one thousand nine hundred and thirteen.

Whereas, lately in the Supreme Court of Porto Rico on the 25th day of May, 1911, in a suit pending in said Court, between Juan Suris Cardona, plaintiff-appellant, and Francisco P. Quiñones and El Banco de Puerto Rico, defendants and appellees, a judgment was rendered against the said Juan Suris Cardona, and the said Juan Suris Cardona, having obtained an appeal and filed a copy thereof in the Clerk's Office of the said Court to reverse the judgment in the aforesaid suit, and a citation directed to the said Francisco P. Quiñones and El Banco de Puerto Rico, citing and admonishing them to be and appear at a session of the Supreme Court of the United States, to be held at the city of Washington, District of Columbia.

Now, the condition of the above obligation is such, that if the said Juan Suris Cardona shall prosecute its appeal to effect
94 and answer all damages and costs if it fails to make good its plea, then the above obligation to be void; else to remain in full force and effect.

(Signed) JUAN SURIS CARDONA, *Appellant.*
DR. ANDRÉS ORSINI.
FERNANDO VAZQUEZ.

ISLAND OF PORTO RICO,
City of ——, *ss:*

We, Andrés Orsini and Fernando Vazquez, each for himself, make oath according to law, deposes and says:

That he is a resident and freeholder within the Island of Porto Rico, that he is worth over the sum of one thousand dollars in visible property in Porto Rico, over and above all just debts and liabilities, exclusive — property exempt from execution.

(Signed) DR. ANDRÉS ORSINI.
FERNANDO VAZQUEZ.

Affidavit Number 3906.

Subscribed and sworn to before me by Dr. Andrés Orsini and F. Fernando Vazquez, both of full age, married, freeholders and neighbors of Mayaguez, P. R. on this 2nd day of the month of August, of the year of Our Lord, one thousand nine hundred and thirteen. I know personally said individuals.

[SEAL.] (Signed) MARIANO RIERA PALMER,
Notary Public.

The foregoing bond approved,
—— ——, *Judge.*

95 In the Supreme Court of Porto Rico.

Civil Case No. —.

JUAN SURIS CARDONA, Appellant,
vs.
FRANCISCO P. QUIÑONES and EL BANCO DE PUERTO RICO.

Reivindication.

UNITED STATES OF AMERICA,
Island of Porto Rico:

I, Andrés Orsini, make oath and say: that I am a resident of the city of Mayaguez, Porto Rico; that I own real estate in said Municipality worth more than one thousand dollars, excluding all debts and liabilities and all property exempt from execution; that I pay taxes on said property for the amount of $3,485, and I in assuming the obligation which I furnished in this case as bondsman of Juan Suris Cardona under date of to-day, I did it freely and without any reservation or purpose of evasion; and I make this affidavit to the end that it may be made a part of said bond for the purposes of the appeal taken by the plaintiff and appellant in this case to the Supreme Court of the United States.

Mayaguez, Porto Rico, 2nd of August, 1913.

(Signed) DR. ANDRÉS ORSINI.

No. 3907.

Sworn to and subscribed before me by Mr. Andrés Orsini, to-day, a resident of this city, married, property owner, of age, whom I personally know. Mayaguez, Porto Rico, 2nd of August, 1913.

[SEAL.] (Signed) MARIANO RIERA PALMER,
Notary Public.

96 In the Supreme Court of Porto Rico.

Civil Case No. —.

JUAN SURIS CARDONA, Appellant,
vs.
FRANCISCO P. QUIÑONES and EL BANCO DE PUERTO RICO.

Reivindication.

UNITED STATES OF AMERICA,
Island of Porto Rico:

I, Fernando Vazquez y Ramos, make oath and say: that I am a resident of the city of Mayaguez, Porto Rico; that I own real estate

in said municipality worth more than $1,000, excluding all debts and liabilities and all property exempt from execution; that I pay taxes on said property for the amount of $9,200; and in assuming the obligation which I furnished in this case as bond-man of Juan Suris Cardona under date of to-day, I did it freely and without any reservation or purpose of evasion; and I make this affidavit to the end that it may be made a part of said bond for the purposes of the appeal taken by the plaintiff and appellant in this case to the Supreme Court of the United States.

Mayaguez, Porto Rico, 2nd of August, 1913.

(Signed) FERNANDO VAZQUEZ.

No. 3908.

Sworn to and subscribed before me by Mr. Fernando Vázquez, to-day, a resident of this city, married, property owner, of age, whom I personally know. Mayaguez, Porto Rico, 2nd of August, 1913.

[SEAL.] (Signed) MARIANO RIERA PALMER,
Notary Public.

97 In the Supreme Court of Porto Rico.

No. 439.

JUAN SURÍS CARDONA, Plaintiff and Appellant,
vs.
FRANCISCO P. QUIÑONES and EL BANCO DE PUERTO RICO, Defendants and Respondents.

Appeal from the District Court of Mayaguez.

Order.

SAN JUAN, P. R., September 8th, 1913.

The bond of $1,000 which has been furnished by the sureties Andrés Orsini and Fernando Vázquez in the above entitled case which was filed under date of to-day to answer for the cost that may be caused by reason of the appeal taken in this case, is hereby approved.

It was so ordered and signed by Hon. Pedro de Aldrey, Associate Justice of the Supreme Court acting in vacation; I certify.

(Signed) PEDRO DE ALDREY,
Associate Justice, Acting in Vacation.

(Signed) J. HERNÁNDEZ USERA,
Secretary.

(Here follow maps marked pages 98 and 99.)

100 [Stamped:] Porto Rico Supreme Court. Received May 22, 1914.

In the Supreme Court of Porto Rico.

No. 439.

JUAN SURÍS CARDONA, Plaintiff and Appellant,
vs.
FRANCISCO P. QUIÑONES and THE BANK OF PORTO RICO, Defendants and Respondents.

Appeal from the District Court of Mayaguez.

On Appeal to the Supreme Court of the United States.

Citation.

UNITED STATES OF AMERICA, *ss:*

The President of the U. S. to Francisco P. Quiñones and The Bank of Porto Rico and Benito Forés and Antonio Sarmiento, their attorneys:

You are hereby cited and admonished to be and appear at and before the Supreme Court of the United States at Washington, D. C. within sixty days from the date of this writ, pursuant to an appeal filed in the office of the Secretary of the Supreme Court of Porto Rico in a certain cause lately pending in said Court, wherein the said Juan Surís Cardona is plaintiff and appellant, and Francisco P. Quiñones and The Bank of Porto Rico, are defendants and respondents, to show cause if any there be why the judgment rendered by this Court in said case on the 25th of May 1911, against the plaintiffs and appellants should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Hon. Jose C. Hernandez, Chief Justice of the Supreme Court of Porto Rico, at the City of San Juan, Porto Rico, this twenty first day of May in the year of our Lord nineteen hundred and fourteen.

JOSÉ C. HERNÁNDEZ,
Chief Justice of the Supreme Court of Porto Rico.

Attest:

[Seal Supreme Court of Porto Rico, United States of America.]

J. HERNANDEZ USERA,
Sec'y Supreme Court.

Tribunal Supremo de Puerto Rico.

Oficina del Marshal.

Recibido el presente mandamiento en su fecha queda debidamente diligenciado entregando copia fiel del mismo a Don Antonio

Sarmiento, en San Juan, y remitiéndose por correo certificado copia del referido mandamiento a Don Benito Forés en San Germán, ambos abogados del apelado, que son las personas a quien el auto se dirige, hoy día 22 de Mayo, 1914.

S. C. BOTHWELL, *Marshal,*
By FELIPE JANER, JR., *Deputy.*

101 In the Supreme Court of Porto Rico.

No. 439.

JUAN SURÍS CARDONA, Plaintiff and Appellant,
vs.
FRANCISCO P. QUIÑONES and THE BANK OF PORTO RICO, Defendants and Respondents.

Appeal from the District Court of Mayaguez.

On Appeal to the Supreme Court of the United States.

Translator's Certificate.

I, Felipe Janer, Jr., official interpreter and translator of the Supreme Court of Porto Rico, do hereby certify:

That the foregoing is a true and faithful translation of their respective originals as the same appear from the original record of this case on file in this Court.

In testimony whereof I have signed this certificate in the city of San Juan, Porto Rico, this 17th day of June 1914.

FELIPE JANER, JR.,
Interpreter and Translator of the Supreme Court of Porto Rico.

P. B.-fgs.

102 In the Supreme Court of Porto Rico.

No. 439.

JUAN SURÍS CARDONA, Plaintiff and Appellant,
vs.
FRANCISCO P. QUIÑONES and THE BANK OF PORTO RICO, Defendants and Respondents.

Appeal from the District Court of Mayaguez.

On Appeal to the Supreme Court of the United States.

Clerk's Certificate.

I, J. Hernandez Usera, Secretary-Reporter of the Supreme Court of Porto Rico, do hereby certify:

That the foregoing papers and proceedings had in the above entitled case are true and faithful copies of their respective originals as the same appear on file and of record in this office and embodied in this transcript by the appellant; I further certify that the translation of said papers and proceedings has been revised by the official interpreter and translator of this Court as shown by his certificate hereto attached and made a part of this transcript.

In testimony whereof I hereunto set my hand and affix the seal of this Court in the city of San Juan, Porto Rico, this 17th day of June, 1914.

[Seal Supreme Court of Porto Rico, United States of America.]

JOSÉ HERNÁNDEZ USERA,
Secretary-Reporter Supreme Court of Porto Rico,
By PABLO BERGER, *Deputy Secretary.*

[Three Porto Rico $10 excise tax stamps, numbered 348,145, 348,146, and 348,147, canceled—P. B., June 17, 1914.]

[One Porto Rico $5 excise tax stamp, numbered 179,866, canceled—P. B., June 17, 1914.]

[One Porto Rico $1 excise tax stamp, numbered 0,712,616, canceled—P. B., June 17, 1914.]

[One Porto Rico fifty-cent excise tax stamp, canceled—P. B., June 17, 1914.]

Endorsed on cover: File No. 24,286. Porto Rico Supreme Court. Term No. 185. Juan Suris Cardona, appellant, vs. Francisco P. Quinones and El Banco de Puerto Rico. Filed June 30th, 1914. File No. 24,286.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1915,

No. 185.

JUAN SURIS CARDONA, apellant.

vs.

FRANCISCO P. QUIÑONES AND EL BANCO DE PUERTO RICO.

APPEAL FROM THE SUPREME COURT OF PORTO RICO.

Errata in appellant's brief filed in this case in the office of the Secretary of the Supreme Court of the United States, and explanatory remarks herein set forth.

Page 25, line 15, figures 134 should be 234, and figures 527 should be 523.

Page 27, line 19, figures 169, should be 161.
Page 28, line 9, figures 1884, should be 1874.
Page 28, line 33, figures 1875, should be 1865.

Page 29, lines 25 and 26, "Sections 2 and 20 of the Mortgage Law promulgated in Porto Rico in the year 1880", should read, "Sections 2 and 23 of the Mortgage Law promulgated in Porto Rico in the year 1880 and still in force."

Page 37, lines 35, 36 and 37 "Decisions of the Supreme Court of Spain of May 28, 1888. No. 214. Page 849. Vol. 63. May 3, 1890. No . . . . Page 287, Vol. 67," should be "Decision of the Supreme Court of Spain of April 17, 1879. No. 125, Vol 41. Page 468."

Page 39, line 37, figures 114 should be 414.
Page 49, line 15, figures 1915, should be 1953.
Page 52, last line, figures 1292, should be 1193.
Page 59, line 44, figures 334, should be 634.
Page 59, line 45, figures 766, should be 776.
Page 60, line 1, figures 360, should be 370 and figures 1861 should be 1871.

Page 60, line 5, "No. 542, April 6, 1847, Vol. 61. Page 121", should be "No. 121, April 6, 1887, Vol. 61, Page 542."

EXPLANATORY REMARKS.

Pages 50 and 54 of Vol. 2, commentaries of Messrs. Galindo and Escosura quoted therein, are of the third edition, printed in Spain in 1896, and reference may be had also to the commentary appearing in Vol. 2, pages 297 to 313 of the fourth edition reprinted in the year 1903.

Section 24 of the regulations of the Mortgage Law, quoted after the insertion of the opinion of Messrs. Galindo and Escosura on page 55, are the regulations that took effect in Spain on January 1, 1871.

Respectfully submitted,

JOSE R. F. SAVAGE

FERNANDO VAZQUEZ

Attorneys for appellant.

Received copy of Errata and Explanatory Remarks in and as to appellant's Brief.

San German, P. R., November 23rd., 1915.

BENITO FORÉS,

Attorney for Francisco P. Quiñones.

Received copy of Errata and Explanatory Remarks in and as to appellant's Brief.

San Juan, P. R., November 22nd., 1915.

A. SARMIENTO,

Attorney for the Bank of Porto Rico.

INDEX

SUBJECT MATTER

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1915.

No. 185.

JUAN SURIS CARDONA, appellant.

vs.

FRANCISCO P. QUIÑONES Y EL BANCO DE PUERTO RICO.

APPEAL FROM THE SUPREME COURT OF PORTO RICO.

BRIEF AND ARGUMENT FOR APPELLANT.

STATEMENT OF THE CASE.

José Salvador and Ramón María Surís, brothers, on or about the years 1860 to 1870, purchased from several persons several portions of land under public instruments executed in the town of San German, and the said portions combined form one estate described as follows:

> RURAL PROPERTY: Containing forty cuerdas of land, situate in the wards of Sabana Eneas and Sabana-Grande of the municipality of San German, being bounded on the north by the hacienda Carolina; on the south by the road leading from San German to Cabo Rojo; on the east by other lands belonging to the brothers Surís; and on the west by the said Hacienda Carolina.

The aforesaid estate in the manner hereinabove described was mortgaged by the said José Salvador and Ramón María Surís, under an instrument dated November 26, 1870, to the Charity

Hospital of San German, to answer for a censo of 6,000 escudos and interest thereon at the rate of five per cent per annum.

The aforementioned Surís brothers, together with their other brother, Epifanio Surís, were owners also of two portions of land situate in the wards of Sabana Eneas and Sabana Grande of San German, one of which was of 20 cuerdas, having, among other boundaries, the Charity Hospital on the south, and the other portion of 34 cuerdas 900 thousandths of a cuerda having, among other boundaries, THE CHARITY HOSPITAL, ON THE WEST.

The brothers Jose Salvador and Ramón María Surís appeared before the San German notary, José Ramón Nazario de Figueroa, on February 15, 1882, and after exibiting a genuine document of the title deed of the seventeen (17) parcels which they had purchased, the said parcels were consolidated because they adjoined one another, and by reason of the said consolidation they became one single property, of which the fellowing is a description:

> "Property "La Perseguida" with an area of forty (40) cuerdas situated in the wards of Sabana Eneas and Sabana Grande of the municipal district of San German; bounded on the north by the Hacienda "Carolina" belonging to Fernando Vélez Borrero; on the south by the highway leading to Cabo Rojo; on the east by other lands belonging to the brothers Surís; and on the west by the Hacienda "Carolina."

After the property "Perseguida" was formed by the grouping of the said parcels it was recorded in the name of the brothers Surís and Ramón María Surís in the registry of property on March 1, 1882, at folio 20 of volume 2 of San German, property No. 90, entry first.

Subsequently to the formation of the property "Perseguida" it began to be called the Charity Hospital because of the fact than it was morgaged to that institution.

In order to carry into effect the division of the lands of what is known as the Hacienda "Cristina" which now forms a part of the Hacienda "Imiza," a proper survey was performed by the duly qualified surveyor, Carlos B. Hernández, as a result of which survey he made a plan in the month of March, 1882, which by agreement and consent of the contracting parties in the deed referred to under the third allegation of the complaint was attached to the said deed.

In the same plan there is specified under N° 3 a parcel of forty (40) cuerdas of land pertaining to the Charity Hospital; and in the said deed of January 18, 1883, executed by the brothers Surís in favor of Pablo María Stéfani covering the 54.900 cuerdas referred to under allegation III of the conplaint, the purchaser Stefani recognizes the validity of the plan and the existence and boundaries of the said forty (40) cuerdas of the Charity Hospital.

By deed executed before the San German notary, José Ramón Nazario de Figueroa, on January 18, 1883, the sisters Cristina, Virginia, Luisa and Margarita Surís leased to Pablo María Stéfani

sixty-nine (69) cuerdas of land belonging to them and described in plan under Nº 9, the deed showing that the said sixty-nine (69) cuerdas were bounded on one side by lands of the Charity Hospital; and in the said deed Stefani again acknowledges the existence of the lands of the Charity Hospital.

The forty (40) cuerdas of land specified in the plan under Nº 3 as belonging to the Charity Hospital never were the property of the said hospital, which never had any land in the wards of Sabana Eneas or Sabana Grande, district of San German, recorded or unrecorded in the registry of property.

The said forty (40) cuerdas of land belonging to José Salvador and Ramón María Surís having been acquired by purchase from several persons during the years 1860 to 1870, and the undivided one-half thereof became the property of the Succession of Ramón María Surís, composed of his widow, María de la Concepción Mestre, and of their children, Maria, Josefa, Ana Ines, Salvador and Jorge Surís y Mestre, who were declared to be his intestate heirs by a decision of the District Court of Mayaguez on April 20, 1907, and which said heirs recorded in their name the undivided one-half of the property in the Registry of San Germán, folio 24, volume 23, property Nº. 90, entry second.

At this time the said property of forty (40) cuerdas belongs to the plaintiff, Juan Surís, who acquired the same from José Salvador Surís and the Succession of Ramón María Surís by deeds executed before the notary of Mayagüez, Fernando Vázquez on July 14 and 22, 1907, for the sum of five thousand five hundred dollars ($5,500), the same being recorded in his name at folio 24 over and 25 over, of volume 2 of San Germán, property Nº. 90, records 3 and 4, under the following description:

> RURAL PROPERTY: Composed of forty (40) cuerdas, situated in the wards of Sabana Eneas and Sabana Grande, municipal district of San Germán, equivalent to fifteen (15) hectares, sixty-eight (68) ares, and twenty-seven (27) centares; bounded on the north by the cane plantation called "Imiza"; on the south by the road leading from San Germán to Cabo Rojo, lands of Sinforoso Quiñones, and the Hacienda "Imiza"; and on the east and west by the Hacienda "Imiza".

Pablo María Stéfani created a voluntary morgage on the two parcels of land described under allegation III of the complaint, comprising 20 and 34.900 cuerdas respectively, and on other parcels, in favor of the mercantile partnership doing business in Mayagüez under the firm name of Schulze & Company, by deeds of August 20, 1886, and July 15, 1887, beforce the notary, Santiago R. Palmer, of Mayagüez; and after the death of Pablo Stefani the partnership concern, Schulze & Company, brought summary foreclosure proceedings against the Succession of Stéfani in the abolished court of First Instance of San Germán for the recovery of a mortgage credit, and in such foreclosure proceedings the firm of Schulze & Company, in payment of the said credit, was awarded,

among other property, the two parcels of 20 and 34.900 cuerdas described under allegation III of the complaint.

During the prosecution of the said summary foreclosure proceedings Messrs. Schulze & Company, foreclosing mortgagees, instituted possessory title proceedings in the Court of First Instance of San German, with the object of making a prior entry of record in the name of the Succession of Stefani, mortgage debtor, or his privy, Pablo Maria Stefani, in which possessory title the property of forty (40) cuerdas now belonging to Juan Suris and the subject-matter of this suit of ejectment, did not appear.

Messrs. Schulze & Company having become the owners of the Hacienda "Imiza" rented from the brothers José Salvador and Ramón María Surís the forty (40) cuerdas of land with other lands belonging to the sisters Surís.

Messrs. Schulze & Company in liquidation appeared before the notary, José Ramón Nazario de Figueroa, on May 5, 1899, and expressed their wish to consolidate the various parcels composing the Hacienda "Imiza" in order to make one single property thereof, and in the first paragraph of the said deed they stated that among the portions that are to be a part of the consolidation there is a portion of twenty (20) cuerdas of land bounded on the south by lands of the Charity Hospital and another portion of thirty-four and nine hundred thousandths (34,900) cuerdas, bounded on the west by the said Charity Hospital.

In paragraph 4 of the exordium of the aforesaid instrument of consolidation of Schulze & Company of May 5, 1899, it is stated that with the different portions composing the Hacienda "Imiza" said firm was forming one single rural property or cane plantation called "Imiza" situated in the wards of Sabana Eneas and Sabana Grande of San German which had been recently surveyed by the civil engineer Pedro Viadé, with the result that the first parcel of 30 cuerdas, the second of 34 cuerdas, the fourth 170 cuerdas, were found after survey to measure 114.30 cuerdas, in the perimeter of which are found two parcels of four and two cuerdas respectively belonging to Sinforoso Quiñones and the two lots acquired from the Misses Surís and from J. Tornabells & Company of 10 and 14 cuerdas respectively, all adjoining one another and forming one single estate of 192.30 cuerdas where the dwelling house and building for the manufacture of sugar are located.

In the aforesaid instrument of consolidation executed by Messrs. Schulze & Company on May 5, 1899, the estates consolidated are enumerated and the manner of their acquisition by Schulze & Company set forth, it not being stated therein that Schulze & Company acquired by any title deed the land of the Charity Hospital which appears as the boundary of the ofttime-repeated lots comprising the 20 and 34.900 cuerdas referred to under allegations III and XII of the complaint, which parcels are comprised in the parcel containing 192. 30 cuerdas the first of the component groups of the consolidated property "Imiza".

In the first clause of the said intrument of consolidation of May 5, 1899 Schulze & Company in describing a parcel of 192.30 cuerdas suppresses the boundary of the Charity Hospital on the south and west, or else substitute the same for those of the planta-

tion "Imiza", thus illegally and fraudulently comprising the said parcel within the lands of the plantation "Imiza".

According to paragraph 1 of the preamble of the said deed of May 5, 1899, the tracts of 20 and 34.900 cuerdas were bounded at the time of the consolidation on the south and on the west by Charity Hospital lands; and the said tracts and others went to make up the parcel of land comprising 292.30 cuerdas. This estate, then, was bounded at the time of its consolidation by Charity Hospital lands, and for this reason the said parcel of 192.30 cuerdas could not be consolidated, because being grouped from certain tracts, among others, which bounded and are bound by lands belonging to the Charity Hospital, said tracts or portions did not nor do they adjoin each other, because they were and are in part separated by the lands of the Charity Hospital; but Schulze & Company, in the first clause of said deed of consolidation executed on May 5, 1899, unlawfully sought to consolidate the said tracts of 20 cuerdas, 34 cuerdas, 114.40 cuerdas, 10 cuerdas and 14 cuerdas, and thus make up the parcel of 192.30 cuerdas by maliciously omitting from the general boundaries of that parcel the boundaries of the lands belonging to the Charity Hospital or substituting the same by those of the Hacienda "Imiza", and by means of the said omission or illegal and fraudulent substitution the said lands of the Charity Hospital were and are inclosed within the said parcel of 192.30 cuerdas, or within some other of the parcels comprising the perimeter of the Hacienda "Imiza", although the said fraud did not result in the recording of the 40 cuerdas of the Charity Hospital lands in the registry of property in the name of Schulze & Company.

By reason of the foreclosure of a voluntary mortgage executed by Schulze & Company, in liquidation, in favor of the Banco Español de Puerto Rico on July 21, 1901, the Marshal of the District Court of Mayaguez sold to the Banco Español de Puerto Rico the mortgaged properties, among which figures the parcel of 192.30 cuerdas described, and the Banco de Puerto Rico has been in unlawful possession and ownership, and had no title, up to November 19, 1907, of the said 40 cuerdas of land known as "Perseguida."

The Banco de Puerto Rico transferred to Francisco Quiñones, resident of San Germán, the properties which it acquired under a deed of sale executed by the marshal of the District Court of Mayaguez in the foreclosure proceedings prosecuted by the said bank in the said court of Mayaguez against Schulze & Company, the property known as "Perseguida" not having been included in this sale, and from and after November 19, 1906 on which date the said Francisco P. Quiñones acquired the property "Imiza" of Schulze & Company, he has been in possession thereof and of its products without any title thereto.

After the Banco de Puerto Rico had acquired the Hacienda "Imiza" of Schulze & Company, this Company maliciously and unlawfully refused to deliver to Jose Salvador Surís and to the Succession of Ramón María Surís the said "Perseguida" estate of 40 cuerdas of land.

The defendant, Francisco P. Quiñones, and the Banco de Puer-

to Rico demurred to the complaint filed by Juan Surís Cardona because it did not contain facts sufficient to constitute a cause of action and said demurrers were overruled by the District Court of Mayagüez.

The complaint was answered by Francisco P. Quiñones denying the allegations set forth in the complaint under numbers 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 19, 20 and 23 for lack of necessary information and belief, and specifically denying the allegation 17 on the ground that Quiñones is not in unlawful possession of property belonging to anyone, but is in lawful possession of property in good faith and under proper title transferred to him by the Banco de Puerto Rico, by deed executed in Mayagüez before the notary Mariano Riera Palmer; and the allegation 18 he denied on the ground that it is untrue that Quiñones is in possession of any property named "Persegaida"; and allegation 21 and 22 were specifically denied because Quiñones is not obliged to return that which he does not possess, nor to turn over imaginary mesne profits.

And as new matter of defense against the complaint he alleged:

That the said defendant Quiñones is and has been in possession in good faith and by lawful title from December 19, 1906, of the various parcels of land forming the Hacienda "Imiza", situated in the wards of Sabana Eneas and Sabana Grande Abajo of the municipal district of San German, which are recorded in the registry of property; and that not long ago the said property was surveyed with the knowledge of the adjoining owners by the surveyor Pedro Viadé, as shown in a plan made, certified to and issued by him.

That the said parcels of land in possession of Quiñones have been possessed in good faith and under lawful title by the Banco de Puerto Rico from the time they were sold by the marshal of the District Court of Mayagüez.

That the said lands were also possessed in good faith and under lawful title by Schulze & Company from the time they were adjudicated to this firm by the now extinct court of First Instance of Mayagüez in foreclosure proceedings which the said company brought against the Succession of Pablo María Stéfani.

That the said lands were possessed in good faith and under lawful title by Pablo María Stéfani who mortgaged them to the said Schulze Company, the possession of Stéfani dating back long before the year 1897, when he died, his heirs continuing in possession until the said parcels of land were adjudicated and delivered to the creditors, Schulze & Company.

That the said lands never have been in possession of any other persons than their true owners although by reason of the bankruptcy of Schulze & Company they were for some time under the management of Genaro Cartagena by order of the Federal Court.

That José Salvador, Ramón María Surís and Juan Surís Cardona have always resided in the city of San Germán, from where the said lands can be reached in half an hour. They have not absented themselves from the said city, and the sisters Margarita and Cristina Surís have possessed and do possess lands adjoining those referred to, and their brothers José Salvador and Ramón

María Surís attended all the time to the management of the lands.

That neither José Salvador nor Ramón María Surís, nor the heirs of the latter, have ever been in possession of the imaginary property called "Perseguida".

That José Salvador and Ramón María Surís, on November 26, 1870, in acknowledging an annuity in favor of the Concepcion Hospital of San German, mortgaged a piece of land comprising 40 cuerdas which, they alleged, formed a part of 70 cuerdas measured by the surveyor Carlos Hernandez but, when the said hospital proceeded to foreclose its mortage the 40 cuerdas were not found, and they then attached 100 cuerdas of land containing the buildings of the old Hacienda "Cristina".

That neither Suris brothers, nor José Salvador nor Ramón María Surís, have rendered any schedules of the said property "Perseguida" for purposes of taxation.

That Surís brothers owed deliquent taxes to the municipality of San German and after orders of attachment issued for the collection thereof Don José S. Surís, who was a member of the firm of Surís Brothers, told the collector that the lands on which taxes were sought to be recovered were in the possession of Schulze & Company who refused to pay the same on the ground that they were back taxes for which they were not responsible.

That in order to collect taxes owed by the Surís Brothers, of which José Salvador and Ramón María Surís were partners, there were attached 12 cuerdas of land which as stated by the said parties and their sister Cristina Surís composed a part of the lands mortgaged in favor of the Charity Hospital. The municipality having attached these lands it sold them to Martin Perez y Villanova, it not being shown that the same were afterwards acquired by José Salvador and Ramón María Surís.

That despite the sale of the said 12 cuerdas of land which José Salvador and Ramón María Surís stated formed a part of the lands mortgaged to the Charity Hospital, the aforessaid José Salvador and Ramón María Surís made the barefaced statement in a public document that several parcels of land acquired under old titles previous to that sale constituted a property composed of 40 cuerdas of land named "La Perseguida", and that it was the same that had been mortgaged to the Charity Hospital, and that such grouping was the grouping of the imaginary property which they did not possess nor pay taxes thereon.

That a short time ago and when the bringing of this unfounded complaint was under way, the plaintiff and his vendors attempted to have the name of this imaginary property "Perseguida" entered in the Treasurer's office so as to pay taxes thereon.

That the parcels of land which are said to constitute the "Perseguida" property were bounded by the "Cristina" plantation, which boundary was substituted by the plantation "Carolina" when the record of the consolidated property was made, and recently Juan Surís Cardona states that the land of Sinforoso Quiñones adjoined the said property, which did not appear as such, nor is it stated that he acquired the same from any other abutting owner.

That the plaintiff, Juan Surís Cardona, is the lawful son of José Salvador Surís y Marchani with whom he has always

lived and who have in common transacted all business and transactions; and the said Juan Surís Cardona is a first cousin of the sons of Ramón María Surís and a nephew-in-law of the mother of those sons, with whom he enjoys the greatest friendship and goodwill, they helping and relieving each other mutually.

That Pablo Maria Stefani, Schulze & Company, the Banco de Puerto Rico and Francisco Quiñones have been in public, peaceful and uninterrupted possession of the lands which constitute and are known as the Hacienda "Imiza" in the character of owners. The possession by the first dates back long before the year 1887 and the titles of all of them are recorded in the registry of property, and therefore the defendant, Francisco P. Quiñones has a perfect right to allege, as he does allege, the prescription of ownership of the so-called property "Perseguida" on the grounds of the provisions of sections 1841, 1842, 1850 and 1858 of the Revised Civil Code.

That the averment made in the complaint regarding the lease of the so-called and imaginary property "Perseguida" is of no legal value, and if such contracts of leases really exist, they in no wise affect the plea of prescription herein made, seeing that the plaintiff maliciously fails to state whether the said contracts were verbal or written, their period of duration, rents (cánones) and other necessary details for the validity thereof.

That the titles of ownership of the land possessed by Francisco P. Quiñones are properly recorded in the registry of property and have not been objected to as fraudulent or null.

That the Bank of Porto Rico as guarantors of the defendant answers the complaint in the manner following, to wit:

By reason of insufficient information and belief it specifically denied the facts set forth in allegations 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 19, and 20 of the complaint.

It admitted the facts set forth in the first part of allegation 17 terminating with the words "allegation 15", to be true, and emphatically and absolutely denied all the rest of the said allegation.

It admitted the facts stated in the first paragraph of allegation 18 of the complaint as true and emphatically and absolutely denied all the rest of the said allegation.

It absolutely denied the facts set forth in allegation 21 of the complaint.

It neither affirmed nor denied the facts set forth in allegation 22 nor made any statement regarding allegation 23, because the former does not concern the petitioner and the latter does not constitute an essential allegation of the complaint.

The plaintiff amended allegations 8, 10 and 16 of the complaint in the manner following:

Allegation 8. The 40 cuerdas of land shown on the plan marked with a number 3, as of the Charity Hospital, were never, nor are they today, the property of the said Charity Hospital. This charitable institution never had nor has it now lands situate in the wards of Sabana Eneas and Sabana Grande within the district of San German, recorded or unrecorded in the registry of property.

The said 40 cuerdas of land were the property of José Salvador and Ramón María Surís and acquired in the manner set forth in

allegation 1; and the undivided half thereof came to be the property of the estate of Ramón María Surís consisting of his widow, María de la Concepción Mestre, and of his lawful children, María, Josefa and Inés, Salvador and Jorge Surís y Mestre declared to be intestate heirs by the District Court of Mayagüez on the 20th day of April, 1907. And the estate of Ramón María Surís recorded the undivided half thereto belonging, on Page 24 of Volume 2 of San German, Property Nº 90, Registration 2.

Today the said property of 40 cuerdas belongs exclusively to the plaintiff Juan Suris Cardona as he acquired the same from Jose Salvador Suris and from the estate of Ramon Maria Suris under deeds executed before Fernando Vazquez, notary of Mayaguez, on the fourteenth and twenty-second day of July, 1907, for the sum of $5,500, and the same is recorded in his name on pages 24 and 25 over, of Volume 2 of San German, Property Nº 90, Registrations 3 and 4, under the following descriptions, which is the same description, as it now has:

> Rural property composed of 40 cuerdas, situate in the wards of Sabana Eneas and Sabana Grande of the municipal district of San German, equivalent to 15 hectares, 62 ares and 21 centares; bounded on the north by the sugar cane plantation named "Imiza"; on the south by the road leading from San German to Cabo Rojo, Sinforoso Quiñones and the plantation "Imiza"; and on the east and west by the said plantation "Imiza".

The variation of the boundaries between this description and that appearing in allegation 4 consists in that the lands of the former abutting owners Velez Borero, Suris Hermanos and the plantation "Carolina", are now lands of the plantation "Imiza".

Allegation 10.– Pablo Maria Stefani created a voluntary mortgage on the two parcels of lands described under allegation III comprising 20 and 34.900 cuerdas respectively, and on other parcels in favor of the mercantile partnership doing business in this city under the firm name of Schulze & Company, by deeds of August 24, 1886, and July 15, 1887, before the notary, Santiago R. Palmer, of this city; and after the death of Pablo Stefani the parnertship concern, Schulze & Company, brought summary foreclosure proceedings against the succession of Stefani in the abolished Court of First Instance of this city for the recovery of a mortgage credit, and in such foreclosure proceedings the firm of Schulze & Company, in payment of the said credit, was awarded, among other property, the two parcels of 20 and 34.900 cuerdas described under allegation III, and entered into possession thereof.

During the prosecution of the said summary foreclosure proceedings Messrs. Schulze & Company, foreclosing mortgagees, instituted possessory titlep roceedirgs in the Court of First Instance of San Germán through their manager, Federico Philippi, with the object of making a prior entry of record in the name of the Succession of Stefani, mortgage debtor, or his privy, Pablo María Stefani, in which possessory title proceedings the property of forty (40) cuerdas now belonging to Juan Surís and the subject matter of this suit

of ejectment, did not appear. The said possessory title was approved by the said Court of First Instance of San German, now extinct, and was recorded in the name of the Succession of Pablo María Stefani in the Registry of Property of San Germán, having been afterwards recorded in the name of Schulze & Company.

Allegation 16.– According to paragraph I of the preamble of the said deed of May 5, 1899, the tracts of 20 and 34.900 cuerdas described under allegation XII, bounded at that time on the south and on the west by Charity Hospital lands, and according to paragraph IV of the said preamble the said tracts of 20 and 34.900 cuerdas and others, went to make up the parcel of land comprising 192.39 cuerdas. This estate, then, was bounded at the time of its consolidation and is at present bounded on the south and west by Charity Hospital lands, and for this reason the said parcel of 192.30 cuerdas could not be consolidated, because, being grouped from certain tracts, among others, which bounded and are bound by lands belonging to the Charity Hospital, said tracts or portions did not nor do they adjoin each other, because they were and are in part separated by the lands of the Charity Hospital; but Schulze & Company, in the first clause of said deed of consolidation executed on May 5, 1899, unlawfully sought to consolidate the said tracts of 20 cuerdas, 34 cuerdas, 114.40 cuerdas, 10 cuerdas and 14 cuerdas, and thus make up the parcel of 192.30 cuerdas by maliciously omitting from the general boundaries of that parcel the boundaries of the lands belonging to the Charity Hospital or substituting the same by those of the Hacienda "Imiza"; and by means of the said omission or illegal and fraudulent substitution the said lands of the Charity Hospital were and are inclosed within the said parcel of 192.30 cuerdas or within some other of the parcels comprising the perimeter of the Hacienda "Imiza," although the said fraud did not result in the recording of the 40 cuerdas of the Charity Hospital lands in the registry of property in the name of Schulze & Company.

The preceding allegations, amended as aforesaid, were not demurred to nor answered by Francisco P. Quiñones nor by the Bank of Porto Rico and thereupon were held to be in default and entry thereof was duly made.

On the date of the trial the plaintiff introduced evidence tending to show that he had a deed of title to the forty (40) cuerdas of land known as "Perseguida" or Charity Hospital land, duly recorded in his name in the Registry of Property, and that the registration thereof had not been in any manner cancelled, and that the said forty (40) cuerdas of land were enclosed within the lands of the plantation "Imiza" and in the possession of Francisco P. Quiñones.

The defendant Francisco P. Quiñones introduced evidence tending to show that there was no parcel of forty (40) cuerdas known as "Perseguida" or Charity Hospital existing in his possession, and that he had been in possession of the plantation "Imiza" under deeds of titles recorded in the registry of property from the time he acquired the same from the Bank of Porto Rico.

And the Bank of Porto Rico introduced evidence consisting of a private document, dated February 8, 1882, and signed by the brothers José Salvador and Ramón María Saurí, and Pablo María

Stéfani, for the purpose of showing that the latter purchased from the former the forty cuerdas of land involved in this suit.

The District Court of Mayagüez rendered judgment on the seventh day of May, 1909, dismissing the complaint: and an appeal having been taken to the Honorable the Supreme Court of Porto Rico, this court, under judgment of May 25, 1911, affirmed the judgment of the District Court of Mayagüez.

The plaintiff, Juan Surís Cardona, took an appeal from the judgment rendered by the Supreme Court of Porto Rico to the Honorable the Supreme Court of the United States, and the said appeal having been granted and a bond furnished, a statement of facts by way of special verdict was prepared by the Supreme Court of Porto Rico and the said statements, together with all other necessary papers constituting the record, have been transmitted to this Honorable Court for its decision of the said appeal.

Having stated the facts in the manner hereinbefore appearing, we shall now proceed to point out the errors committed by the Supreme Court of Porto Rico.

BILL OF ERRORS.

With the petition for appeal submitted to the Supreme Court of Porto Rico, an assignment of errors was attached thereto pointing out the following:

1.— THE SUPREME COURT OF PORTO ERRED IN CONFIRMING THE JUDGMENT OF THE DISTRICT COURT OF MAYAGUEZ.

2.— THE SUPREME COURT OF PORTO RICO AND THE DISTRICT COURT OF MAYAGUEZ ERRED IN NOT RENDERING JUDGMENT ON THE PLEADINGS OF THE APPELLANT AND PLAINTIFF IN ERROR.

3.— THE SUPREME COURT OF PORTO RICO AND THE DISTRICT COURT OF MAYAGUEZ ERRED IN NOT FINDING IN FAVOR OF THE PLAINTIFF THE FACTS ALLEGED IN PARAGRAPHS EIGHT (8) TEN (10) AND SIXTEEN (16) OF THE COMPLAINT AS AMENDED.

4.— THE SUPREME COURT OF PORTO RICO ERRED IN FINDING THAT THE DISTRICT COURT OF MAYAGUEZ ADMITTED IN EVIDENCE, AS A TRUE DOCUMENT THE DOCUMENT DATED FEBRUARY 9, 1882, SET FORTH IN THE STATEMENT OF FACTS IN THE NATURE OF A SPECIAL VERDICT.

5.— THE SUPREME COURT OF PORTO RICO ERRED IN NOT SUSTAINING THE SEVENTH ERROR ASSIGN-

ED IN THE APPEAL TO SAID COURT FROM THE DISTRICT COURT OF MAYAGUEZ IN ADMITTING AS PROOF THE PRIVATE DOCUMENT DATED FEBRUARY 9, 1882, PRESENTED BY THE DEFENDANT, EL BANCO DE PUERTO RICO, WHICH SAID ADMISSION BY THE COURT WAS MADE IN THE FOLLOWING TERMS:

> "The court now admits the private document presented by counsel for the Bank, not as a genuine document but as a document against which the other party who offered it has presented evidence, the validity of which document is submitted to the court."

6.— THE SUPREME COURT OF PORTO RICO ERRED IN GIVING ANY LEGAL EFFECT WHATSOEVER TO THE MENTIONED PRIVATE DOCUMENT DATED FEBRUARY 9, 1882, AS AGAINST THE PLAINTIFF AND HIS PREDECESSORS IN TITLE, WITH RESPECT TO THE LANDS IN CONTROVERSY.

7.— THE SUPREME COURT OF PORTO RICO ERRED IN NOT FINDING THAT ANY RIGHTS OR ACTIONS ORIGINATING IN THE SAID PRIVATE DOCUMENT, DATED FEBRUARY 9, 1882, HAD PRESCRIBED AT THE TIME OF THE ESTABLISHMENT OF THIS ACTION.

8.— THE SUPREME COURT OF PORTO RICO ERRED IN GIVING EFFECT TO SAID PRIVATE DOCUMENT DATED FEBRUARY 9, 1882, AS AGAINST THE PUBLIC DEED IN FAVOR OF THE PLAINTIFF INSCRIBED IN THE REGISTRY OF PROPERTY.

9.— THE SUPREME COURT OF PORTO RICO ERRED IN HOLDING THE SAID PRIVATE DOCUMENT DATED FEBRUARY 9, 1882, TO BE A LEGITIMATE AND VALID DOCUMENT.

10.— THE SUPREME COURT OF PORTO RICO ERRED IN HOLDING THAT THE DEFENDANTS HAD ACQUIRED TITLE TO THE LANDS IN CONTROVERSY BY FORCE OF PRESCRIPTION.

11.— THE SUPREME COURT OF PORTO RICO ERRED IN HOLDING JUAN SURIS CARDONA NOT TO BE THIRD PARTY (TERCERO) WITHIN THE MEANING OF THE

MORTGAGE LAW OF PORTO RICO WITH RESPECT TO THE TITLES OF THE LANDS IN CONTROVERSY.

12.— THE SUPREME COURT OF PORTO RICO ERRED IN NOT REVOKING THE JUDGMENT OF THE DISTRICT COURT OF MAYAGUEZ AND IN NOT ORDERING THE DELIVERY TO THE PLAINTIFF OF THE POSSESSION OF THE LANDS IN CONTROVERSY, AND THE PAYMENT TO THE PLAINTIFF OF THE VALUE OF THE FRUITS WHICH SAID LANDS HAVE PRODUCED FROM THE DATE OF THE PRESENTATION OF THE COMPLAINT TO THE DATE OF SAID DELIVERY OF POSSESSION.

13.— THE SUPREME COURT OF PORTO RICO ERRED IN HOLDING THAT PABLO MARIA STEFANI INSCRIBED IN HIS NAME IN THE REGISTRY OF PROPERTY THE LAND IN CONTROVERSY.

Having assigned the errors committed by the Supreme Court of Porto Rico we shall now proceed to argue the same in the order in which they are stated above.

1ST ERROR.

THE SUPREME COURT OF PORTO RICO ERRED IN AFFIRMING THE JUDGMENT OF THE DISTRICT COURT OF MAYAGUEZ.

In the transcript of the record transmitted to the aforesaid Supreme Court of Porto Rico from the District Court of Mayagüez, there was sufficient evidence to render judgement in favor of the plaintiff, and such evidence was not borne in mind by the Supreme Court.

2ND ERROR.

THE SUPREME COURT OF PORTO RICO AND THE DISTRICT COUPT OF MAYAGUEZ ERRED IN NOT RENDERING JUDGMENT ON THE PLEADINGS IN FAVOR OF THE APPELLANT AND PLAINTIFF IN ERROR.

The answers of the defendants are not in accord with the provisions of the Code of Civil Procedure in force in Porto Rico or with the jurisprudence established in the matter of a sworn complaint.

The Bank of Porto Rico for want of information and belief

denies the allegation of the complaint under numbers 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 13, 14, 15, 16, 19 and 20.

> The object of the oath in the complaint and answer is that of insuring the good faith of the party.
>
> Patterson vs. Ely. 19 Cal. 28.

The defendant cannot be permitted to deny facts appearing in public documents duly filed, for want of sufficient information and belief.

Allegation 1 to 9, both inclusive, and allegation 20 might have been answered by the Bank by a simple admission or denial; and as to numbers 10 to 16, both inclusive, the same are within the legal knowledge of the corporation, Banco de Puerto Rico, for they refer to the title of the plantation "Imiza", of which said Bank was owner.

> Facts which necessarily should be within the knowledge of the defendant may not be denied on information and belief; and a denial of such nature is evasive.
>
> Curtis v. Richards, 9 Cal. 33.
>
> Hauffacker v. National Bank, 12 Bush 287.
>
> Union etc. Co. v. Supervisor, 47, Cal, 245.

The denials of the Banco de Puerto Rico with regard to those facts are as evasive as those of defendant Quiñones. The said facts with reference to public deeds, are kept in public files stated in the complaint where it was easy to examine them for the purpose of either admitting or denying them on absolute affirmation, rather than denying the same on information or belief, specially so allegations 10 to 16, both inclusive, as they refer to the title of the plantation "Imiza", which is the property of defendant Quiñones.

> A denial on information and belief is evasive where the facts alleged in the complaint are found presumptively within the knowledge of the defendant.
>
> Loveland v. Garner 74 Cal. 298.

And the same with regard to the Bank as with regard to Francisco P. Quiñones, such facts are within their knowledge, not only presumptively but conclusively.

The denial of allegation 17, as well as 18, is insufficient, as each fact is not denied separately, but instead some are admitted while others are denied.

> Each proposition should be denied separately.
>
> More v. del Valle, 28 Cal. 170.

The denials of allegations 17, 18, 21 and 22 of the defendant Quiñones are insufficient, argumentative, null and evasive, as they do not constitute specific denials of those facts.

> Where there is a sworn complaint and the answers thereto as to the material allegations therein are denied by saying it is not true, etc., such an answer is evasive and not a specific denial of the facts.
>
> Verzan v. MacGregor, 22 Cal. 339.

And it is clearly seen that the said allegations 17, 18 and 22 are essential allegations for without them all other allegations of the complaint would be incomplete, and the cause of action would be insufficient.

> The demurrer may be taken to the answer to the complaint because the answer does not state facts sufficient to constitute a defense or counterclaim.
>
> Section 117, paragraph 2, of the Code of Civil Procedure in force in Porto Rico.

And it is clear that if the answer does not state facts sufficient to constitute a defense or counterclaim, then it is inefficient and may be dismissed for he, who has no cause of action to claim, has no right to the remedy for which he prays. And such allegation may be made at any time and at any stage of the case.

The answer of Quiñones contains what he terms a statement of new matter of opposition or defense to the complaint, which he explains in allegation 18 and the text of which we could comprise in two divisions, as follows.

A. Numbers 1, 2, 3, 4, 5, 14, 16, 17 and 18, under which certain facts are established which are not new matter nor do they constitute any opposition or defense.

B. Numbers 6, 8, 9, 10, 11, 12, 13 and 15, under which certain facts are established which are not new matter nor do they constitute any opposition or defense.

We shall examine separately the facts contained in each of the groups or divisions aforesaid and will see the conclusions derived therefrom.

Allegations 1 to 5, both inclusive, and allegation 16, though new matter, do not constitute any opposition or defence because the plaintiff has not made any allegation tending to show that Quiñones and those under whom he claims are not now, nor have they been owners of the plantation, "Imiza." The allegation is that, the forty cuerdas constituting the property named "Perseguida", are inclosed within that plantation.

Allegation 14 is purely argumentative and 17 is nothing but the reproduction of certain grounds for demurrer that was alleged by the defendant and dismissed by the court.

As to the second group it is easy to note that allegation 6 is immaterial, even for the purpose of prescription.

Allegation 8 refers to the placing of the "censo" in the same manner in which it is alleged in the complaint, and everything else contained in the said allegation, may be very new but does not constitute any opposition or defense.

Allegations numbers 9, 10, 11, 12 and 13, even though new matter do not constitute any defense or opposition whatever, because the fact that the parties under whom the defendant claims did not pay taxes on the property "Perseguida", does not mean and much less does it prove that they were not the owners of the said property.

Neither does allegation 15 constitute new matter of defense, nor does any cause of action against the plaintiff arise therefrom.

Allegation 16 is immaterial, because the fact sought to be established thereby, refers to the possession of the plantation "Imiza"; and the plantation "Imiza", that which really constitutes the same, has not been the object of the complaint, for this refers exclusively to the recovery of the forty cuerdas of land which are no part of the plantation "Imiza" though the same are enclosed within it.

And lastly, allegation 7 is, as a whole, a statement of an allegation in the form of a certain fact, but which really, does not constitute a fact, because facts are realities that may be proven, while denials never admit of proof, except where a denial involves an affirmation, or the affirmation is stated in a negative form.

The denials contained in the answers of both the said defendants are therefore evasive, argumentative, defective, insufficient and immaterial, and all new matter of defense in the answer of Quiñones is immaterial, irrelevant and redundant and therefore the conclusion is self evident.

> A matter which does not discharge or make void a cause of action previously existing, but the purpose of which is to show that the alleged cause of action has never existed and that the allegations of the complaint are not true, constitutes no new matter as required for a special allegation.
>
> Churchill v. Bauman, 25, Cal. 548.

Therefore, both answers, the Bank's, because of insufficiency and because of its evasive denials, and Quiñones, on the same grounds and also because it contains no new matter of defense to the complaint, do not constitute a cause of action, are void and should be dismissed.

3RD ERROR.

THE SUPREME COURT OF PORTO RICO AND THE DISTRIC COURT OF MAYAGUEZ ERRED IN NOT FINDING IN FAVOR OF THE PLAINTIFF THE FACTS ALLEGED IN PARAGRAPHS EIGHT (8), TEN (10) AND SIXTEEN (16) OF THE COMPLAINT AS AMENDED.

The aforesaid allegations, 8, 10 and 16 were amended by the plaintiff and as no demurrer or answer was made thereto by the defendants, judgment by default was entered in acordance with the provisions of section 107 of the Code of Civil Procedure in force in Porto Rico, which reads as follows:

> If the complaint is amended, a copy of the amendments must be filed, or the court may, in its discretion, require the complaint, as amended, to be filed, and a copy of the amendments, or amended complaint, must be served upon the defendants affected thereby. The defendant must answer the amendment, or the complaint, as amended, within ten days after service thereof, or such other time as the court may direct, and judgment by default may be entered upon failure to answer, as in other cases.
>
> Section 107, Code of Civil Procedure in force in Porto Rico.

> Every material allegation of the complaint, not controverted by the answer, must, for the purposes of the action, be taken as true.
>
> Section 132, Code of Civil Procedure in force in Porto Rico.

Whether the said allegations 8, 10 and 16 were or were not sworn to, they were not controverted by way of demurrer or answer, and must have been taken as true, and judgment against the defendants should have been rendered in accordance therewith as there is no legal provision or resolution in conflict with the provisions of the aforesaid Section 132.

4TH ERROR

THE SUPREME COURT OF PORTO RICO ERRED IN FINDING THAT THE DISTRICT COURT OF MAYAGUEZ ADMITTED IN PROOF AS A TRUE DOCUMENT THE PRIVATE DOCUMENT DATED FEBRUARY 9, 1882, SET FORTH IN THE STATE-

MENT OF FACTS IN THE NATURE OF A SPECIAL VERDICT.

It appears from the opinion of the Supreme Court of Porto Rico (Page 45 of the transcript of the record) that the party plaintiff objected to the admission of the private document hereinbefore mentioned, and even if no such objection had been made the court should have disallowed it of its own motion, it being an expressed and conclusive mandate of the Mortgage Law.

> After this law shall go into effect, no document or instrument which has not been recorded in the registry whereby rights subject to record under said law, are constituted, transferred, acknowledged, modified, or discharged, shall be admitted in ordinary or special courts or tribunals, in councils or in the office of the Government, if the purpose of the presentation should be to enforce to the prejudice of a third person a right which should have been recorded.
>
> Section 389 of the Mortgage Law in force in Porto Rico.

In the answers of Francisco P. Quiñones, defendant, and of his warrantor, the Bank of Porto Rico, no mention whatever is made of the private document of February 9, 1882, and the same could not have been admitted in evidence except in violation of the Law of Evidence, which, as to this particular subject, provides as follows:

> Evidence must correspond with the material allegations, and be relevant to the question in dispute. It is, however, within the discretion of the court to permit inquiry into a collateral fact when such fact is directly connected with the question in dispute, and is necessary to its proper determination, or when it affects the credibility of a witness.
>
> Section 34 of the Law of Evidence in force in Porto Rico.

And the plaintiff being unaware of the existence of the said private document and of the contents thereof, could not be prepared to make a defense thereto and introduce evidence against it, and, therefore, the admission thereof by the District Court of Mayaguez was a surprise to the plaintiff that deprived him of his lawful right to a defense.

5TH ERROR.

THE SUPREME COURT OF PORTO RICO ERRED IN NOT SUSTAINING THE SEVENTH ERROR ASSIGNED IN THE APPEAL TO SAID COURT

FROM THE DISTRICT COURT OF MAYAGUEZ TO WIT, THAT THE DISTRICT COURT OF MAYAGUEZ ERRED IN ADMITTING AS PROOF THE PRIVATE DOCUMENT DATED FEBRUARY 9, 1882, PRESENTED BY THE DEFENDANT, EL BANCO DE PUERTO RICO, WHICH SAID ADMISSION BY THE COURT WAS MADE IN THE FOLLOWING TERMS:

"The court now admits the private document presented by counsel for the Bank, not as a genuine document but as a document against which the other party has presented opposition, and in support of which the party who offered it has presented evidence, the validity of which document is submitted to the court."

In support of this error we reproduce herein in all parts thereof all arguments heretofore made in support of the preceding error.

6TH ERROR.

THE SUPREME COURT OF PORTO RICO ERRED IN GIVING ANY LEGAL EFFECT WHATSOEVER TO THE MENTIONED PRIVATE DOCUMENT DATED FEBRUARY 9, 1882, AS AGAINST THE PLAINTIFF AND HIS PREDECESSORS IN TITLE, WITH RESPECT TO THE LANDS IN CONTROVERSY.

At the trial held in the District Court of Mayaguez, a certain private document dated February 9, 1882 (No. 2 of the findings on page 50 of the transcript of the record), was introduced in evidence by the defendants for the purpose of disputing to the plaintiff the ownership of the forty acres of land in question, but such document does not in any way prejudice the right of the plaintiff for the reasons that we shall now allege and for other reasons that we shall allege hereinafter.

Under paragraph 7 of the findings the Supreme Court of Porto Rico holds that under the aforesaid private document of February 9, 1882, the brothers Surís sold to Pablo María Stéfani the said forty cuerdas of land which the plaintiff claims in this action, while we maintain that the ownership of the said forty cuerdas of land was not conveyed or assigned to any person whatsoever under the said document, according to the text thereof.

In the year 1882, when the abovementioned private document was executed, the civil code was not in force in Porto Rico. The Partida Laws and others laws were then in force as construed by the Supreme Court of Spain in the several judgments rendered by it, and had to be strictly observed as such laws. The Civil Code was put in force in Porto Rico in January, 1889.

The jurisprudence applicable to contracts in the year 1882, and ratified by the Civil Code of Spain, since repealed, and by the Revised Code of Porto Rico, is the following:

A contract exists only where the following requirements are found:

1.—Consent of the contracting parties.

2.—A definite object which may be the subject of the contract.

3.—The cause for the obligation which may be established.

Section 1261 of the Repealed Civil Code of Spain.

Section 1228 of of the Revised Civil Code of Porto Rico.

Although In the private contract of February 9, 1882, (page 50 of the transcript of the record) it is stated that Pablo María Stéfani purchased from the brothers Surís the aforesaid forfy cuerdas of land for the sum of $5,800 it is also stated that the deed of conveyance of the property will be given by the said Surís to the administrator of the hospital for the amout of the principal and interest belonging to this institution, according to such liquidation as may be made. Therefore, according to the text of the said document there is no denying the fact that the forty cuerdas were purchased and the payment of the price or part thereof was made by the charity hospital or the administrator thereof inasmuch as it was the administrator who was to receive the deed of conveyance of the ownership thereof in payment of the mortgage credit thereon. If it should appear from the document aforementioned that Stéfani was paying the whole price, then it might be understood that Stéfani was purchasing the forty cuerdas for himself even though the deed of conveyance was made to the hospital or to the administrator thereof, but, as the hospital was to pay a part of the price with the mortgage credit and interest thereon that it had on the forty cuerdas, it is as clear as daylight that the true purchaser of the land is the hospital.

And as it does not appear from the private document hereinabove referred to that the hospital ever gave its consent for the purchase of the forty cuerdas of land in the manner aforesaid, none of the requirements of the section of the Civil Code hereinabove mentioned are found in the contract, on the part of the hospital, in order to perfect the contract.

But even in the hypothesis that all the said requirements were present in the said private document on the part of the hospital, the purchase and sale of the said forty cuerdas of land was not consummated because the price was not paid and because no possession of the land was given to the purchaser, which are two conditions absolutely necessary to a consummation of a contract of

sale. Lacking either one of the two the contract was not consummated.

Jurisprudence on this question is as follows:

> Contracts of purchase and sale are perfected by the consent of the parties, namely,—by their agreement as to the thing and as to the price and are consummated by the delivery of the thing to the vendee and by the payment of the price to the vendor.
>
> Decisions of the Supreme Court of Spain of June 14, 1860, No. 218, Vol. 5, Pag. 491. June 30, 1866, No. 289, Vol. 14, Page 232. Oct. 13, 1864, No. 283, Vol. 10, Page 161. March 13, 1885, No. 107, Vol. 57, Page 383.

> Two distinct acts, though interrelated, must be distinguished in every contract of purchase and sale: one is the perfecting of the contract made and which is the source of reciprocal rights for the contracting parties, the moment that they agree upon the price and upon the thing, and the other one is the consummation of the contract itself, which does not take place until the vendor and vendee reciprocally deliver to each other the price of the sale and the thing which is the object thereof.
>
> Decision of the Supreme Court of Spain of October 2, 1885, Nº 344, Vol. 58, Page 436.

> Under Law Nº 4, Title 28, Partida 3, it is provided that the ownership (dominion) of the thing sold is not conveyed to the vendee although he has taken possession thereof, if he has not paid the price, unless the purchaser shall have been given time to make payment and that the vendor shall have trusted him therefor.
>
> Decision of the Supreme Court of Spain of December 14, 1861, Nº 395, Vol. 6, Page 732.

FAILURE TO PERFECT THE CONTRACT.

The contract was not perfected because it does not appear from the private document of February 9, 1882, that the Charity Hospital or the administrator thereof was agreeable to receive the deed of conveyance of the ownership of the said forty cuerdas of land making payment therefor with the mortgage credit that the said hospital had thereon.

And even in the supposition that vendor and vendee were the brothers Surís and Stefani, yet, for the purpose of perfecting the

contract, the execution of a public deed was an indispensable requisite, inasmuch as it was one of the conditions established in paragraph 2 of the said contract. This allegation is supported by the laws that we shall hereafter quote.

> Where vendor and vendee agree upon the execution of the contract by means of a public deed, the purchase and sale is not completed or perfected, until the same is done.
>
> Decision of the Supreme Court of Spain of October 3, 1859, N° 1, Vol. 5, Page 5.
>
> For a contract of purchase and sale to be deemed to be perfected, a public deed is necessary if the same has been made an essential condition of the contract.
>
> Decision of the Supreme Court of Spain of February 20, 1861, No. 52, Page 128, Vol. 6.
>
> Where a condition is made that the contract of purchase and sale shall take effect under a public deed, the contract is not perfected until the said deed shall have been executed.
>
> Decision of the Supreme Court of Spain of February 8, 1867, No. 30, Vol. 15, Page 114.
>
> Contracts shall be binding, whatever may be the form in which they may have been executed, provided the essential conditions required for their validity exist.
>
> Section 1278 of the Repealed Civil Code of Spain, Section 1245 of the Revised Civil Code of Porto Rico.
>
> Should the law require the execution of an instrument or other special formality in order to make the obligations of a contract binding, the contracting parties may compel each other to comply with said formalities from the moment in which consent and the other requirements necessary for their validity, have taken place.
>
> Section 1279 of the Repealed Spanish Civil Code. Section 1246 of the Revised Code in force in Porto Rico.

Pursuant to the aforegoing provisions of law, if Pablo María Stéfani believed that the aforesaid private document of February 9, 1882, was valid he should have compelled extrajudicially, or judicially if necessary, the said brothers Surís, to execute the public deed

of ownership of the forty cuerdas of land aforementioned in favor of the Charity Hospital or of the administrator thereof, and when such deed was executed, then the contract contained in the said private document would have had force and effect.

SUPPOSING THAT THE CONTRACT WAS PERFECTED, THE PURCHASE AND SALE OF THE PROPERTY WAS NEVER CONSUMMATED.

The consideration of $5,800 stipulated in the private document herein above referred to was to be paid in two parts and by two distinct persons. A part thereof was to be paid by the Charity Hospital and in payment therefor there was to be adjudicated the mortgage credit and interest thereon belonging to the Hospital on the aforesaid forty cuerdas, the Hospital receiving the said forty cuerdas upon due liquidation to be made of the credit aforesaid and interest thereon, while the other part was to be paid by Stéfani to settle 500 pesos as fees for lawyer Font and other costs that were to be paid by Surís.

The consideration, namely,-the price of the sale, would not be paid until the Hospital should receive the deed of ownership of the said forty cuerdas and until Stefani should pay the resulting difference between the amount to be shown by the liquidation, and the sum of $5,800 pesos stipulated as the consideration for the sale.

And it does not appear from the findings that the liquidation of the mortgage credit of the Charity Hospital was ever made or that the Hospital or the administrator thereof ever received the title or deed of ownership of the forty cuerdas, nor that Stefani ever paid to any person whatsoever the difference between the sum of 5800 pesos, the price of the land, and the amount of the liquidation in case the latter did not reach the said amount of 5800 pesos.

In the opinion (Page 41 of the transcript of the record) it is stated as follows:

> "That Stefani purchases for the sum of 5800 pesos with which he would pay the purchaser for the mortgage credit due with interest thereon and costs. And that this was done by the purchaser is shown by the fact that he directed that the deed of conveyance be made to the Hospital, *undoubtedly while payment was made*, and that it has not been alleged nor has it been shown that the Surís Brothers had to pay the amounts representing the sum of 5800 pesos which was the price of the sale."
>
> "And that the price of the sale was delivered the moment that Stefani accepted the responsibility of Surís Brothers as his own."

In the paragraphs hereinabove transcribed there are certain errors of importance in the analysis of which we shall now enter.

It does not appear from the text of the aforesaid private document that Stéfani, with the sum of 5,800 pesos of the price stipulated in the private document above mentioned was to pay the Hospital for the mortgage credit and the costs; but it does appear very clearly that the mortgage credit of the Hospital was collected by the Hospital itself by taking the deed of ownership of the forty cuerdas of land, which was to be executed by the Surís Brothers.

It is also another error to affirm that Stéfani paid the Hospital for its mortgage credit and interest thereon, because of the fact that he directed that the deed of ownership be given to the Charity Hospital, as this does not in any way constitute a manner of payment. Payment may be made only in the manner prescribed by Sections 1157 and 1125 respectively, of the Repealed Spanish Civil Code and of the Code in force in Porto Rico.

We shall call attention to a manifest contradiction existing in the wording of the Supreme Court of Porto Rico in the paragraphs herein above transcribed, for while it affirms that Stéfani paid the price, it also affirms that Stefani directed that the deed of ownership be executed to the Hospital, undoubtedly until payment was made, and therefore the Supreme Court affirms at the same time that the price was paid and that it was not paid.

It is a further error to hold that it has not been alleged or proven that the Surís Brothers had to pay the amounts representing the sum of 5,800 pesos, the price of the sale, because, if there were any such sale it was to the defendants, whose duty it was to prove that such payments were made in compliance with the conditions stipulated in paragraph 2 of the said contract.

And likewise it is another error to hold that delivery was made of the price of the sale from the moment that Stefani accepted as his own the responsibilities of the Surís brothers. In the first place, because it does not appear from the text of the private document that Stefani accepted the responsibilities of the Surís brothers as his own, and in the second place because even if it were so, in order to give legal affect thereto it was necessary and indispensable to have the concurrence of the Charity Hospital for the purpose of accepting a charge of debtor, and the Hospital did not concur.

THE PURCHASER WAS NOT PLACED IN POSSESSION OF THE LANDS BY THE VENDORS.

The purchaser of the land, which was the Charity Hospital, was not placed in possession thereof by the vendors, the Surís brothers; and even supposing the purchaser to be Pablo María Stefani, no possession of the land was given him; and in order to avoid unnecessary repetition we shall take up this point at length when we come to allege hereinafter the possession for acquisitive prescription of the ownership of the said land.

From the private document it does not appear that Stefani

binds himself to pay the Charity Hospital the amount due the latter by the Surís brothers as held in the opinion of the Supreme Court. (Page 44 of the transcript of the record) But, if it could be understood in that way then we would have a

NOVATION OF THE CONTRACT OF MORTGAGE ENTERED INTO AND BETWEEN THE SURIS BROTHERS AND THE CHARITY HOPITAL.

Such novation would consist in the sustitution of the mortgage debtor, the Surís brothers, for the common debtor, Paolo María Stefani; and this could not be done without the consent of the Charity Hospital unless in contravention of the laws hereinbelow cited.

> No novation can be made in any contract with respect to the obligations and rights of a third party who does not intervene in the celebration of such contract.
>
> Decision of the Supreme Corurt of Spain of June 28, 1860, N°. 134, Page 527, Vol. 5.
>
> Where acceptance is fully shown of record, there is no violation of the provisions of Law 15, Title 14, Partida 5, pursuant to which, novation of contract by substitution or delegation of the debtor, requires the consent and acceptance of the creditor.
>
> Decision of the Supreme Court of Spain of December 15, 1874, N°. 17, Vol. 31, Pag 62.
>
> Although under Law 15, Title 14, Partida 15, there is a novation of contract where the debtor renews the suit providing another debtor or manner in its place to the person to whom the debtis due and to his satisfaction, all such circumstances must be found together with such others as are required by the same law.
>
> Decision of the Supreme Court of Spain of June 12, 1867, No. 178, Pag 641, Vol. 15.
>
> A novation should not be established by presumptions but by the express will of the parties.
>
> Decision of the Supreme Court of Spain of February 14, 1876, No. 80, Page 328, Vol 33.
>
> Obligations may be modified by substituting the person of the debtor.
>
> Novation, consisting in the substitution of a debtor

in the place of the original one, may be made without the knowledge of the latter, but not without the consent of the creditor.

Section 1205 of the Repealed Spanish Civil Code. Section 1173 of the Revised Civil Code of Porto Rico.

And as it does not appear from the private document hereinabove cited, nor from the findings that the Charity Hospital gave its consent for the substitution of the debtor, the contract entered into and between Stefani and the Surís brothers would be void as to that particular question.

But even supposing that the said private document contained a contract of purchase and sale, perfected and consummated, it would also contain,

UNFULFILLED CONDITIONS THAT WOULD PREVENT A COMPLIANCE THEREWITH.

Such conditions are:

1. That the deed of ownership of the forty cuerdas of land was to be executed by the Surís brothers to the Charity Hospital for the amount of the principal and interest belonging to that institution.

2. That for the purpose of knowing the amount of the said principal and interest, a liquidation thereof was first to be made.

If it was agreed in the private contract that a liquidation was to be made of the principal and interest of the mortgage credit that the Charity Hospital had on the aforesaid forty cuerdas of land, and that the deed of ownership was to be made for and in consideration of the amount shown by such liquidation in favor of the Charity Hospital, and for the said forty cuerdas, it is clear that such deed could not be executed until such liquidation was made, thus complying with the condition established in the private document.

This allegation Is supported by the following jurisprudence:

Obligations, pursuant to the constant rulings of law, must be complied with in the manner in which they were contracted; and it having been stipulated clearly and positively that the vendor was to receive the price agreed to at the time of the execution of the deed of conveyance, after deducting whatever amounts for whatever purposes due to the purchaser, pursuant to such liquidation as was to be presented by the latter, it

is obvious that such previous liquidation which could have been and may be obtained by mutual agreement or by judicial decision given in an action at law, does necessarily contain an unfulfilled condition as to compliance with, or consummation of, the contract.

Decision of the Supreme Court of Spain of October 2, 1885, No. 344, Page 436, Vol. 58.

Conditional obligations are comprised within the provisions of Law 14, Title 22, Partida 3, which provides that judges should not render conditional judgments, and if rendered and the party against whom rendered should appeal, the judge of the appellate court to revoke the same on that ground.

Decision of June 14, 1864, of the Supreme Court of Spain, No. 179, Page 472, Vol. 9.

Conditional obligations are not affective until compliance therewith has been attained.

Decision of the Supreme Court of Spain of October 13, 1864, No. 283, Page 169, Vol. 10.

Conditional contracts and those contracts under which the contracting parties acquire and contract reciprocal rights and obligations are only effective when the obligations thereunder are fulfilled, or where the contracting parties comply with their respective obligations thereunder.

Anything modifying or extending the effect of a contract, imposing upon each of the contracting parties the obligation to be subject thereto, is a condition.

Decision of the Supreme Court of Spain of December 24, 1866, No. 480, Page 866, Vol. 14.

Conditional obligations are only effective when the condition shall have been complied with by the party bound to comply therewith.

Decision of the Supreme Court of Spain of June 11, 1867, No. 175, Page 630, Vol. 15.

A compliance with a conditional obligation can be required only where the condition has been fulfilled.

Decision of the Supreme Court of Spain of June 25, 1867, No. 196, Vol. 16, Page 14.

In conditional obligations there is no assignment nor date for its taking effect until the condition shall have been complied with.

Decision of the Supreme Court of Spain of November 21, 1872, No. 7, Page 25, Vol. 27.

A purchaser cannot exact a compliance with the right that he believes accrues to him if he does not comply on his part with the obligations giving rise to said right.

Decision of May 21, 1884, No. 188, Page 91, Vol. 30.

In conditional obligations, the acquirement of rights, as well as the determination or loss of rights previously acquired, depend upon the event constituting the condition.

Section 1114 of the Repealed Spanish Civil Code. Section 1081 of the Revised Civil Code in force in Porto Rico.

7TH ERROR

THE SUPREME COURT OF PORTO RICO ERRED IN NOT FINDING THAT ANY RIGHTS OR ACTIONS ORIGINATING IN THE SAID PRIVATE DOCUMENT, DATED FEBRUARY 9, 1882, HAD PRESCRIBED AT THE TIME OF THE ESTABLISHMENT OF THIS ACTION.

Personal actions prescribe after the lapse of twenty years from and after the day on which they could have been exercised.

Law 7, Title 8, Book 11 of the Latest Compilations. Personal actions for which there is no time specified for the prescription thereof, prescribe after the lapse of fifteen years.

Section 1964 of the Repealed Spanish Code. Section 1875 of the Revised Civil Code of Porto Rico.

Among personal actions of extinctive prescription there are found such actions as are derived from the consensual contract known as contract of purchase and sale.

From this contract several actions arise, some of which refer to a compliance with, or to the consummation of, the contract, while

others refer to the rescission thereof, and finally actions referring to the nullity of the same.

The three main actions relative to a compliance with or fulfillment of the contract of purchase and sale are the following:

> (A) The action *empti* which accrues to the vendee or to his heirs against the vendor or against the heirs of the latter, to demand and obtain the delivery of the thing sold with appurtenances and fruits thereunto belonging, where the contract has been perfected.
>
> (B) The action *venditti*, which accrues to the vendor or to his heirs against the vendee or his heirs after the the contract is perfected to claim and obtain payment of the price stipulated for the thing, and legal interest thereon.
>
> (C) And the action *for execution of deed of the real property purchased*, which accrues to the purchaser of the real estate who made the purchase by word of mouth, or under a private document to be reduced to a public instrument under a contract then to be perfected, which is an essential requisite for a consummation of the contract and to give it force and effect with regard to a third party, through the recording thereof in the registry of property.
>
> Law 1, Title 5, Partida 5.
>
> Sections 2 and 20 of the Mortgage Law promulgated in Porto Rico in the year 1880.

As the contract appearing in the private document had not been perfected and the sale therein referred to was far from having been consummated, as heretofore shown by us, such purchase and sale was extinct and therefore such actions as may be derived from the said private document have prescribed (in the supposition that the contract was not void), because of the lapse of over 26 years from 1882, in which it was executed, until 1909 in which it was filed in court; and it cannot produce any legal effect whatsoever in favor of the defendants to make effective the obligations therein contained.

8TH ERROR.

> THE SUPREME COURT OF PORTO RICO ERRED IN GIVING EFFECT TO SAID PRIVATE DOCUMENT DATED FEBRUARY 9, 1882, AS AGAINST THE PUBLIC DEED IN FAVOR OF THE PLAINTIFF INSCRIBED IN THE REGISTRY OF PROPERTY.

The forty cuerdas of land forming the estate "Perseguida" or Charity Hospital, were recorded in the Registry of Property of San German in the name of José Salvador Surís and of the heirs of Ramón María Surís, (No. 3 of the findings, Page 50 of the record), and the purchaser under the said Surís, who is the plaintiff herein, did also record the same in the registry (No. 6 of the findings, page 51 of the record).

And this being so the private document so often mentioned hereinabove and executed between the Surís brothers and Pablo María Stefani cannot prejudice the rights of of the plaintiff, who is a third party, which rights were acquired by virtue of a public deed and under the protection of the mortgage law in force.

That document can only produce its effects as between the signers, who were the Surís brothers and Pablo María Stefani, pursuant to the following law:

> A private instrument legally acknowledged shall have, with regard to those who signed it and their legal representatives, the same force as a public instrument.
>
> Section 1225 of the Repealed Spanish Civil Code.
>
> Section 1193 of the Revised Civil Code of Porto Rico.

Where real property is recorded in the name of a person in the registry of property, such person acquires a right thereto of such a nature that he cannot be at the mercy of the results of a private document wherein the party acquiring that right has not intervened.

Anything contrary to the above would be in contravention to the provisions of paragraph 2 of Section 34 of the Mortgage Law, which we shall copy hereinafter, and it would be trampling under foot the guarantee given by the said law to the persons who record in the Registry of Property the rights acquired by them.

Where the title to a property has been recorded nothing can oppose it except another title also recorded, for if it were not so the recording would be so inefficient from the moment that it was done as to be entirely useless.

> Only by virtue of a recorded instrument may another later instrument, also recorded, be invalidated to the prejudice of a third person, with the exceptions mentioned in article 389.
>
> Section 34, paragraph 2 of the Mortgage Law.

The office of the general director of the Registries of Property and of the offices of Notary of Spain, in a decision dated November 3, 1879, held that a sale appearing from a private document could only produce its effect as between the contracting parties, and that

in order to prejudice a third party it was necessary that such sale should appear under public document and be recorded in the Registry of Property.

9TH ERROR.

THE SUPREME COURT OF PORTO RICO ERRED IN HOLDING THE SAID PRIVATE DOCUMENT DATED FEBRUARY 9, 1882, TO BE A LEGITIMATE AND VALID DOCUMENT.

This party maintains that the said document does not exist and is null and void in all parts thereof and therefore that it cannot produce legal effects in favor of any person.

CAUSES FOR THE NULLITY OF PRIVATE DOCUMENT HEREINABOVE REFERRED TO.

The reasons in support of said nullity are the following:

(a) It appears from the said opinion (Page 31 of the record) which is made a part of the judgment,

"That in March, 1879, Surís Hermanos declared themselves insolvent before the Court of First Instance at San Germán and surrendered their property in favor of their creditors, among whom they included the Charity Hospital; and in the statement of their property there figured as the only real property 100 acres of land in Sabana Eneas, which were bounded on the north by the plantation «Carolina»; on the south by the road leading to Cabo Rojo; on the east by the lands of the Misses Surís, and on the west by the plantation «Carolina.» A house of stone rubblework and an engine house formed part of said real estate.

On July 8 of the same year the manager of the Charity Hospital instituted executory proceedings against José and Ramón Surís for the collection of the mortgage debt and the interest due thereon; and on the 11th of the same month and year an order for attachment and execution was issued by the judge, but the brother Surís requested that said execution proceedings be joined with the bankruptcy proceedings, which request was refused by the Court of First Instance and granted by the Territorial Court.

The executory proceedings instituted by the hospital were again prosecuted, and on February 8, 1882, the two brothers Surís were required to pay, which they refused to do for the reason that inasmuch as no resolution had been passed to desist from the bankruptcy proceedings, and the attachment by which their property was encumbered had not been raised, they had no personal capacity

to comply with the aforesaid requisition because they were in bankruptcy and had no property with which to pay.

In view of this answer, the bailiff on the following day, February 9, 1882, attached and delivered to Pablo Ma. Stefani, as a deposit, 100 acres of land which had the same boundaries as the land which, in the bankruptcy proceedings, had been declared by the aforesaid brothers Surís to be their property.

And that on the same day of the attachment the private document herein referred to was executed".

If on the ninth day of February, 1882, the Surís brothers found themselves under bankruptcy proceedings, because in 1879 they had voluntarily petitioned for a meeting of their creditors, there is no doubt that at that time they were still more disqualified to manage and to sell their property, pursuant to the following provisions of law:

Sections of the Code of Civil Procedure that was in force in Porto Rico until the year 1885:

Section 524. In the court where the proceedings in bankruptcy are had the judge shall issue such orders as may be necessary for the attachment and trusteeship of all the property of the debtor, and for the occupation of his books and papers and for the retention of his correspondence.

Section 526. In addition to the custody of the property it shall be the obligation of the receiver.

1.—To manage the property of the bankrupt.
2.—To collect any credits belonging to the debtor.
3.—To propose to the judge the disposal of such property as cannot be kept.

Section 543. In every bankruptcy proceeding two receivers shall be appointed. This number may be increased to three by resolution of two-thirds of the creditors attending the meeting.

Section 547.—Upon the appointment of the receivers, they shall be given possession of the property and shall be given notice whenever necessary. Furthermore, their appointment shall be published by edicts to be posted in the usual places and in such official papers where the call for their appointment was published.

Notice shall be given in said edicts that all property belonging to the bankrupt shall be delivered to the receivers.

The decision of the Supreme Court of Spain, of Dec. 11, 1871, No. 376, Page 727, Vol. 24 held:

> 1. That pursuant to Section 524 of the Law of Civil Procedure, upon declaration of bankruptcy and the meeting of creditors, all property of the debtor shall be attached and deposited, his books and papers shall be occupied and his correspondence retained, and therefore he is deprived thereafter from the administration and disposal of the said property, and whatever powers of attorney he might have executed with relation to the said property are null and void, even though such powers shall have been made irrevocable, as it is not possible to maintain such powers where the debtor lacks the power that he formally had, and from which they took all their force and effect.
>
> 2. That by virtue of this stipulation the moment that a husband is declared in involuntary bankruptcy the irrevocable power of attorney that he had granted to his wife empowering her in the name of both to manage, sell or exchange whatever property they had or might have, loses all its force and effect, and in consequence of this all acts executed thereafter by the wife in use of the the said power are null and void.
>
> 3. That the trial court in holding that the said power had expired and that all contracts executed by virtue thereof were null and void, from and after the day when the declaration in bankruptcy was made, did not violate the principles of law relative to the enforcement of contracts, and that it is not legal for any person to destroy the rights that he has irrevocably transmitted to another.

Upon a declaration in bankruptcy the bankrupt is separated and prohibited from the administration of his property, and without power to perform any act in relation thereto.

> Decision of the Supreme Court of Spain, No. 25, Page 89, Vol. 29, of January 8, 1874.

The judicial occupation of all the property and belongings of the bankrupt is a legal and necessary consequence in all bankruptcy proceedings.

> Decision of the Supreme Court of Spain of March 14, 1873, No. 119, Page 438, Vol. 27.

The bankrupt being deprived of the use and disposal of his property, he cannot continue to occupy the same except by consent of his creditors, and his holding of same is precarious.

Decision of the Supreme Court of Spain of October 30, 1885, No. 390, Page 642, Vol. 58.

Bankruptcy is established the moment the assignment of property in favor of creditors is made.

Decision of the Supreme Court of Spain of November 15, 1880. No. 313, Page 337, Vol. 44.

Contracts in conflict with the laws are null and void and therefore without legal force to be obligatory.

Decision of the Supreme Court of Spain of March 21, 1884, No. 125, Page 510, Vol. 54.

Any act, which under the law, is null and void cannot give rise to obligations, the validity of which shall have to be taken as of course.

Decision of the Supreme Court of Spain of Sept. 25, 1883. No. 263, Page 12, Vol. 53.

B.—Because the private document herein referred to, notwithstanding the fact that at the end thereof it "reads signed by the witnesses present," yet it appears signed by one witness only, whereas the Partida Laws required that private as well as public documents should be signed by two witnesses. The law applicable to the case is as follows:

> Where a document is made by a person other than the signer, if such letter was given as to certain things as well as to a sale or an exchange of things, or of a vine, it is of no value to prove fully thereby as if in a presumptive case.
>
> The same do we say as to a letter not written by a public scribner, and which letter having been written by another person or signed by two witnesses in writing with their own hand, must hold good during the life of the persons subscribing their names thereto.

Law 114, Title 18, Partida 13.

Addenda. A public document is worthless, where the month, day or the year in which it was made is not written, or where the names of at least two witnesses have been written by their own hands or by the hands of the public scribner who drafted the public document, according to the custom of the land.

Law 61, Title 18, Partida 3.

It may be seen from the laws hereinabove cited and which were

in force in the year 1882, that a document not executed before a public scribner and even through so executed before such official must have been signed, in addition to the contracting parties, by at least two witnesses, and that a document executed before a public scribner, but lacking this requirement, was null and void.

And if a public document, lacking the signatures of two witnesses, was void, it is also clear that a private document, which lacked such requirement and was executed in the year 1882, was also void; especially when the mortgage law, promulgated in 1880, as well as the regulations for the drafting of public documents subject to registration, under which the concurrence of two witnesses is required, were in force.

C.—Because if Pablo Stefani contracts by his own right under the said private document, he could not bind the Charity Hospital without the consent of the latter, to receive in payment of the mortgage and interest thereon which he had on the forty cuerdas, the deed of ownership of this land, and because if he were acting as the attorney in fact for the Hospital, the existence of the power of attorney does not appear from the private document itself.

The following laws are applicable to this point:

In order that a contract made on behalf of a third party shall have force and effect, it is necessary that such third party ratify the same and impart his approval thereto, otherwise, such contract is null and void.

> Partida 7, Title 34, Rule 10 and Laws 7, 8, 9, and 11. Partida 5, Title 2.

Contracts of purchase and sale made through attorneys in fact or mandatories are valid and of legal effect where the existence of the power appears of record.

> Decision of the Supreme Court of Spain of November 18, 1864. No. 348 Page 362, Vol. 10.

No person may contract in the name of another unless authorized therefor, or unless, under the law, he is his legal representative.

A contract made in the name of another by a person who has not the authority nor is the legal representative is null and void unless such contract be ratified by the person in whose name it was executed before revocation by the other contracting party.

> Section 1259 of repealed Spanish Civil Code.
> Section 1226 of the Revised Civil Code of Porto Rico.

It does not appear that the Charity Hospital nor its administrator signed the private document herein referred to of February the ninth, 1882, and it does not appear from the findings that the said contract was thereafter ratified in any manner.

D.— Because in the said private document the boundaries of the forty cuerdas of land therein mentioned are omitted and such omission is a cloud affecting the document, pursuant to the following jurisprudence.

> A public document wherein the abutting owners of property are not described in the manner provided in Section 9 of the Mortgage Law is void and cannot be recorded in the Registry of Property.
>
> Decision of Supreme Court of Porto Rico of Nov. 1, 1910, No. 71 Page 720, Vol 16.
>
> In every conveyance of real estate the designation of the boundaries is indispensable.
>
> Section 1374 of the Revised Civil Code of Porto Rico. Paragraph 2.
>
> Section 1471 of the Repealed Spanish Civil Code.

E.— Because the said forty cuerdas of land at the time of the execution of the aforesaid private document were under attachment and in the hands of Pablo Maria Stefani, as receiver, to answer the Charity Hospital for the credit that it was judicially claiming from the Suris brothers in the Court of First Intance of San German.

In the opinion of the Supreme Court of Porto Rico (Page 31 of the transcript of the record) it is stated that in the schedule of property submitted by the Suris brothers at the meeting of creditors, the only real property therein appearing was 100 cuerdas of land which they owned in Sabana Eneas and on page 31 of the transcript of the record it is stated that on the ninth day of February, 1882, the bailiff levied an attachment on, and delivered to, Pablo Maria Stefani, as receiver, 100 cuerdas of land having the same boundaries as the land described in their schedule which was submitted at the meeting of creditors. Under Number 2 of the findings it also appears that 100 cuerdas of land were attached belonging to the brothers Jose Salvador and Ramon Maria Suris, and placed in possession of Pablo Maria Stefani, as Receiver, in the foreclosure proceedings that were being prosecuted against them by the Charity Hospital.

If the Suris brothers when presenting themselves in bankruptcy had only 100 cuerdas of land, which were attached and subject to such bankruptcy proceedings, and the said land was thereafter attached on petition of the Charity Hospital, to answer for a credit of the latter, and the same was placed in possession of Pablo Maria Stefani, it is evident that the said forty cuerdas of land referred to in the private document aforesaid were then under attachment

and in possession of Mr. Stefani as an integral part of the 100 cuerdas declared in the bankruptcy proceedings. And likewise it is evident that the Suris brothers could not sell the same without authority from the court issuing the attachment.

The doctrine is as follows:

> He who has no other legal qualification of record than that of receiver (depositario) under the attachment levied to secure payment of a credit against a firm, pursuant to provisions governing the obligations of the receiver should deliver the thing under his custody whenever so directed by the court.
>
> Decision of the Supreme Court of Spain of February 12, 1878, No. 48, Page 163, Vol. 39.
>
> A property having been legally attached on petition of several creditors, may not be sold to any person without the intervention or authorization of the court by which such attachments were decreed.
>
> Decision of the Supreme Court of Spain of April 27, 1869, N°. 120, Page 465, Vol. 19.

G.- DOUBLE SALE

In the hypothesis that the private document was not void and that it was as ample and far reaching as pretended by the defendant, then we would have a double sale of the hospital or "Perseguida" property made by the Surís brothers; the first to Pablo Stefani and the second to the plaintiff, and in that case the property must necessarily be adjudicated to the plaintiff, pursuant to the following laws.

> Where a deed of sale is not recorded in the registry and another deed of later date for the same purpose has been so registered, a judgment holding the latter contract to be void, having been recorded in the registry, and directing the cancellation thereof and that the first document be recorded, is in violation of Sections 23, 36 and 38 of the Mortgage Law.
>
> Decisions of the Supreme Court of Spain of May 28, 1888. No. 214. Page 849. Vol. 63. May 3 1890. No..... Page 287. Vol. 67.
>
> Where the same thing shall have been sold to several purchasers the ownership thereof shall be transferred to the first person who shall have taken possession thereof, if personal property.

> If real estate, the ownership thereof will belong to the party who shall have first registered the same in the registry of property.
>
> Section 1376 of the Revised Civil Code of Porto Rico.

The plaintiff having recorded in the registry of property his deed of purchase from José Salvador Surís and from the heirs of of Ramon Maria Surís, and having paid the price therefor, and Francisco P. Quiñones having failed to record the same in his name, as it was not purchased by him, the property necessarily belongs to the plaintiff.

10TH ERROR.

THE SUPREME COURT OF PORTO RICO ERRED IN HOLDING THAT THE DEFENDANTS HAD ACQUIRED TITLE TO THE LANDS IN CONTROVERSY BY FORCE OF PRESCRIPTION.

It is impossible to admit that Francisco P. Quiñones, defendant and appellee herein, is the owner of the forty cuerdas of land involved in this suit, through ordinary acquisitive prescription of ownership.

The Supreme Court of Porto Rico acknowledges that the title of ownership of the forty cuerdas of land, which composed the property named «Perseguida» or Charity Hospital is in favor of the plaintiff and appellant, under paragraph 6 of the findings and in the two paragraphs appearing on pages 41 and 42 of the transcript of the record, which we shall proceed to copy.

> «In view of all the evidence, we think—and perhaps the lower court was also of the same opinion—that the property which the brothers Surís mortgaged to the Charity Hospital, which property consisted of 40 acres and was formed by 16 parcels of land which afterwards were consolidated into a single property and recorded in the registry of property by the aforesaid brothers Surís who later on sold the same to the plaintiff herein, is included within the area of the present plantation «Imiza» of the defendant Quiñones; but this fact alone does not necessarily lead to the conclusion that judgment must be rendered in favor of the plaintiff.»
>
> «The real question to be decided in this suit is contained in the sixth, seventh, and tenth assignments of error, which we will discuss together; but before doing so and as a consequence of what we have said, we wish to state that in our opinion it has been proven that 16 of the 17 parcels of land which, during the years from 1860 to 1870, were purchased from different persons by

the brothers Surís, were mortgaged by the latter to the Charity Hospital, according to the boundaries stated in the mortgage deed; that they were the same parcels which afterwards, together with another parcel, 17 in all, were consolidated into a single property in 1882 and recorded in the registry of property; that they are the same that were purchased by the plaintiff, as stated in his deed, and that they are included in the plantation «Imiza», which is the property of the defendant Quiñones, who purchased the same from the Bank of Porto Rico, which, in turn, had acquired said plantation from Schulze & Company, who had derived it from the Succession of Pablo Stefani.»

Now let us see whether, notwithstanding this, some fact has occurred which prevents Francisco Surís Cardona, the plaintiff herein, from recovering the aforesaid estate.

It is not possible to have a better demonstration of the right of ownership of the plaintiff to the lands in dispute. The Supreme Court of Porto Rico has been unable to acknowledge in its opinion or in its findings that the forty cuerdas of land in question have been sold by Stefani or his succession to Schulze & Company, nor by the latter to the Banco de Puerto Rico, nor by this to Francisco P. Quiñones, as in the paragraph hereinabove transcribed, reference is made to the plantation «Imiza» only, which is entirely different from the «Perseguida» or «Charity Hospital» property.

> Records are not extinguished as to third persons except by their cancellation or by a record of the conveyance of the ownership or property right recorded to another person.
>
> Section 77 of the Mortgage Law of Porto Rico.

> Things, the existence of which is once proven, such existence continues to be presumed for the time that other things of a like nature usually last.
>
> An interest in real property, once created, the presumption is that it continues until extinguished by sale or assignment or by inheritance or descendancy.
>
> 60 Cal. 114.

It does not appear from the findings that the record of the property in question in favor of Juan Surís Cardona has been cancelled by reason of transfer or assignment, and therefore such record must produce all the legal effects thereof against the defendant.

> Against the title recorded in the registry of property, the ordinary prescription of ownership or of property rights shall not obtain to the prejudice of a third person,

except by virtue of another title similarly recorded, and the time shall begin to run from the date of the entry of the latter.

Section 1949 of the Repealed Spanish Civil Code.

Section 1850 of the Revised Civil Code of Porto Rico.

The plaintiff, Juan Surís Cardona, in support of his action of ejectment of the forty cuerdas of land composing the property named "Perseguida" or "Charity Hospital" filed a copy of a deed executed in his favor by José Salvador and by the heirs of Ramón María Surís in the year 1907, duly recorded in his favor, and in opposition to this the defendant, Banco de Puerto Rico, filed a private document dated February 9, 1882, and executed between the Surís brothers and Pablo María Stéfani, hereinbefore mentioned, without being recorded in the registry of property.

Pursuant to the sections of law hereinabove transcribed, against the title presented by the plaintiff, who is a third party protected by the Mortgage Law, only another title similarly recorded could have been admitted for the purpose of ordinary prescription, and the time of possession would have begun to run from the date of the entry of the second title. The Supreme Court of Porto Rico in the case at bar had no ground upon which to figure the time of possession for prescription, as no title, recorded as aforesaid, had been submitted to it as against the title submitted by the plaintiff, Surís Cardona.

The eminent jurist, Mr. Manresa, commenting upon the section herein above copied, on page 826 of Volume 12 of his commentaries, states as follows:

"LEGAL PRINCIPLE OF THIS PROVISION.

The provision of this section is a consequence of the provision contained in Section 462 of this Code, and of the principles sanctioned by the Mortgage Law. From and after the publication of the Mortgage Law, prescription has no force against a third party who has the title of his right or of his ownership recorded in the proper registry of property, unless the person whose title prescribes shall do so by virtue of another title of the same efficiency as that of the person in whose prejudice prescription is alleged or attempted, and which is also recorded, because in such case this inscription will be the starting point and the determination for prescription, as it is also for a computation of the time necessary for the prescription of the thing possessed.

Pursuant to Section 35 of the Mortgage Law, prescription which does not require a good title shall not prejudice a third person if the possession on which it is

to be based does not appear of record, nor shall prescription which require a good title prejudice a third person if such title is not recorded, and in either case the terms for prescription shall run from the date of the record.

The said section further provides that with regard to the legal owner of the real property or interest, which is in process of prescribing, the title shall be determined by, and the time computed in accordance with, the provisions of the common law.

By comparing this section with the section of the Code it will be noticed that the first embraces in its provision ordinary as well as extraordinary prescription, and expressly denies to the legal owner the standing of a third person, while the second, without this explanation, refers only to ordinary prescription.

The terms thereof being correctly understood, it appears that two cases might occur: One, where acquisitive prescription of ownership or of all other property rights be the ordinary prescription, and another the extraordinary, and the provision of this section is applicable only to the first case.

In accordance with that, ordinary prescription will produce no effect to the prejudice of a third person, against a title recorded in the registry of property, except by virtue of another title similarly recorded, and the time necessary for such prescription must begin to run from the time of the entry of the second one of the aforesaid titles. That is to say, the effectiveness of prescription depends upon the recording of the title on which it is based: and the time transpired in possession since prescription began until such recording was made is deemed as not having transpired for the purposes of the said prescription.

The reason of law therefor is found in the principles stated in Section 25 of the Mortgage law pursuant to which, recorded instruments shall not produce any effect as to third persons except from the date of their admission to record, and the efficacy thereof may not be brought back to a day later than that of the entry of presentation for the purpose aforesaid. This principle would be violated in fact if prescription were effective to the prejudice of a third party, against the person who shall have his title recorded, before the recording of the title upon which the prescription is based: and not only would that principle be violated but other provisions carefully stated in the code would also be violated.

And effectively so: he who possesses by virtue of a title recorded in the registry the thing or object of prescription, cannot fail to be considered as a possessor in good faith, whose possession acquired as such, does not

lose its original character pursuant to section 435 (Repealed Spanish Civil Code), as long as there are no acts showing undue possession on his part, and the presumption will be that he continues to enjoy the same under the same conditions in which he acquired it, pursuant to Section 36, unless the contrary be proven. Therefore, it is necessary that there be acts of sufficient legal force to put an end to that possession in good faith, which is the lawful right of the person who has his title recorded in the registry, because from the time of such recording it produces its natural effects against third persons and against all. Thus it is that the said possession is effective and subsists as long as the effectiveness of the title recorded is not lost by the recording of another title in opposition thereto, leaving without legal effect the prior registration.

This second title upon compliance with the requirements for the registration thereof, will product its effects to the prejudice of a third person from the date thereof against the original possessor and as against all, putting at an end the presumption established in Section 436, because from that moment the possession of the first has been controverted and the continuance therein de facto, notwithstanding the controversion implied thereby, would be contrary to law and without the necessary requirement of good faith. Therefore, the possession of the first title produces no effect, for prescription purposes, on the face of a second recorded title in opposition thereto, and the law presumes the same in the second title, for the purposes aforesaid, because under Section 445, de facto possession may not be acknowledged in favor of two distinct persons, except in cases of undivided interests as we have repeatedly stated."

Under paragraph 9 of the findings (Page 51 of the record) it is affirmed that the property claimed in this suit ceased to belong to the Suris brothers by virtue of the sale set forth in the contract of February 9, 1882. But as there was no such sale, on February 9, 1882, the property was of the Surís brothers, and it was so until it was sold to the plaintiff Juan Surís Cardona.

And for the purpose of avoiding unnecessary repetitions we reproduce herein each and every reason set forth in this brief on the question of lack of perfection and consummation of the contract of purchase and sale.

> For ordinary prescription of ownership and other property rights, it is necessary to possess things in good faith and under a proper title, during the time specified by law.
>
> Section 1940 of the Repealed Spanish Civil Code. Section 1841 of the Civil Code in force in Porto Rico.

BAD FAITH

There was not good faith on the part of Pablo Stefani or on the part of Surís brothers upon the execution of the private document of February, 9, 1882, because both knew that at that time the said parcel of forty cuerdas was under judicial attachment to answer to the Charity Hospital for the amount due it, as we have shown when considering the question of the nullity of the said private document under letter «E» of this brief. They also knew that the said parcel of forty cuerdas was in possession of Stefani and subject to the bankruptcy proceedings of the Surís brothers, and, therefore, they did not ignore the fact that the ownership thereof could not be conveyed by them as long as they were attached without authorization from the court decreeing the attachment, and that Stefani could not appropriate the same to himself or deliver it to anybody, without the authorization of the court, which had the custody thereof.

> Good faith of the possessor consists in his belief that the person from whom he received the thing was the owner of the same, and could convey his title.
>
> Section 1950 of the Repealed Spanish Civil Code. Section 1851 of the Civil Code of Porto Rico in force.

> Pursuant to Law 19, Title 19, Partida 3, real property may be obtained in ten years as among persons present and in twenty years as among absentees, provided the same shall have been acquired by virtue of a just title and that the person conveying the same as well as the person receiving shall act in good faith.
>
> Decision of the Supreme Court of Spain of June 27, 1866, No. 280, Page 195, Vol. 14.

The defendant, Francisco P. Quiñones, is also a possessor in bad faith from and after the moment that he had knowledge of the action brought against him, and from that moment he should be answerable for mesne profits received by him and which should have been received by the plaintiff, pursuant to the following provision of law.

> A bona fide possessor is he who possesses as owner by virtue of a title sufficient in its terms and conditions to transfer the ownership, and the defects of which he is ignorant of. Bona fide possession ceases from the moment the possessor becomes acquainted with the defects of the title, or through a suit instituted by the owner of the thing to recover the same.
>
> Section 366 of the Civil Code in force in Porto Rico.

A possessor in bad faith shall pay for the fruits collected and for those which the lawful possessor might have collected, and shall only have the right to be reimbursed for the necessary expenses incurred in the preservation of the thing.

Section 457 of the Civil Code in force in Porto Rico.

LACK OF TITLE FOR ORDINARY PRESCRIPTION.

The possession by Pablo Maria Stefani of the forty cuerdas of land in liquidation, has been without just title, in the first place, because the private document hereinabove referred to is void, and in the second place, because even if it were valid the contract of purchase and sale was never perfected and much less consummated. But, if the said private document could be considered to be a just title in favor of Stefani, there would not be the least doubt that the possession by Schulze & Company, by the Bank of Porto Rico and by Francisco P. Quiñones, if it be that any one of them had such possession, has been without any title whatever.

Where does it appear that Stefani or his succession assigned the ownership of the forty cuerdas of land to Schulze & Company, or that the latter transferred the same to the Bank of Porto Rico and by this to Francisco P. Quiñones? Nothing of this appears in the findings, and not even in the opinion of the Supreme Court of Porto Rico, but on the contrary it does appear in paragraph 6 of the findings, as a thing proven, that the said forty cuerdas of land are recorded actually in the name of the plaintiff, Juan Surís Cardona, by virtue of the deed of title unto him transmitted by José Salvador Surís and by the heirs of Ramon María Surís.

It must not be forgotten that it does not appear from the findings that Pablo Stefani did ever record the said forty cuerdas of land in the registry of property, and that Schulze & Company for the purpose of entering the attachment levied by him on the property of the succession Stefani, to collect a certain mortgage credit, had to institute possessory proceedings in the Court of First Instance of San Germán as to the property of the Succession Stefani, because they had no dominion title recorded of that property and that in the said possessory proceedings the said property "Perseguida", of forty cuerdas of land did not appear. (Page 34 of the record)

A title originally void for lack of legal formalities in the constitution thereof, cannot produce any legal effect whatever, for the recording of same.

Decision of the Supreme Court of Spain of April 6, 1875, No. 152, Page 616, Vol. 31.

Nullity cannot be cured by prescription.

Decision of the Supreme Court of Spain of December 10, 1869, No. 328, Page 654, Vol. 20.

He who acquires a thing from a person who had no right to convey the same, can only have recourse to prescription for thirty years.

Decision of the Supreme Court of Spain of December 2, 1870, No. 32, Page 141, Vol. 23.

H.—In paragraph 9 of the findings it is deemed to have been oven that since 1882 the property herein claimed ceased to belong the brothers José Salvador and Ramón María Surís, by virtue of e sale set forth in the private contract aforementioned, and that nce that time it has been possessed quietly, peacefully and public- as owners, by Stefani, thereafter by Schulze & Company, and terwards by the Banco de Puerto Rico and lastly by Mr. Quiño- es, as among persons present, with good faith and under a title of rchase. But, it is not stated as a fact proven that Pablo María efani had assigned the property to Schulze & Company and the lat- r to the Bank of Porto Rico and this last to Francisco P. Quiñones, nder a public or private document, and therefore it is evident that e possession of the three parties last mentioned, although it had een as owners and in good faith, it has certainly been without any tle thereto. For the purpose of showing that a real property has een acquired by ordinary prescription, it is not sufficient to state the judgment in general terms that the defendant has acquired it nder a title of purchase, but it is absolutely necessary to state or describe the title by virtue of which such property, which is said o have prescribed, was acquired.

In the decision of the Supreme Court of Spain, No. 120, Page 04, of Volume 25, and dated April 10, 1872, it is stated.

Whereas, Don Simón Adrián Chavarri has in his favor a presumption of the property in litigation for the two reasons hereinabove stated, as the instrument executed in Puebla de los Angeles by Don José Serrano Barradaz on January 30, 1816, which is an express and perfect donation among living persons and at the same time it is a power to recover the property donated in favor of the sister Doña Josefa, constituted a just title of conveyance of ownership.

And in all the decisions of the Supreme Court of Spain cited by us at the end of this argument on Error No. 10, with reference to ordinary prescription mention is made of the title upon which the prescription is based.

In one of the last paragraphs of the Opinion of the Supreme Court of Porto Rico (Page 44 of the transcript of the record) the following is stated:

> "In short, the private contract of purchase and sale between the brothers Surís and Stefani is a legitimate contract; it is lawful and has produced the effect of conveying to the purchaser the ownership of the property claimed, and affects the plaintiff by reason of the circumstances which he knew when he acquired the property referred to."

And it is clearly deduced from that paragraph that after the execution of the said private document, the property «Perseguida» or «Charity Hospital» was not sold by Stefani nor by any other person under either a public or private document.

Let us now see what Mr. Manresa says on the question of just title in volume 12, Page 839 of his Commentaries on the Civil Code.

DEFINITION OF JUST TITLE.

> A just title, pursuant to Laws 9 an 14 of Title 29 of Partida 3 was the true reason upon which the possessor was to base his possession, as both laws required that, in order to obtain the thing possessed by prescription and for the purpose of making effective such possession, it was necessary to possess for some true reason, such as purchase, donation, exchange or some other reason similar to these. The code project of 1851, in section 1958, in accordance with section 3449 of the Louisiana Code, stated that just title must be understood to be a title legally capable of assigning or conveying ownership; but our code has supplied the deficiency in the said definition by stating that just title shall be understood to be the title sufficient in law to transfer the ownership or real right, the prescription of which is being treated, that is to say, that for ordinary prescription it is necessary for the person possessing with the intention of prescribing, that he shall do so by virtue of some legal cause, acquisitive of ownership, and such legal cause which constituted the true reason referred to in the Partida Laws, is that which is comprised under the name of «Just Title.» Therefore, this is the legal cause for the acquisition of ownership through possession in this class of prescriptions, and such must be the case of such others as under the law may produce a transfer of ownership. It has been so held by the Supreme Court in several decisions anterior and posterior to the publication of the Civil Code in which the doctrine is upheld that a title by virtue of which property is possessed being sufficient for assignment or conveyance of ownership, it is a cause sufficient for prescription.

CONDITIONS THAT MUST BE PRESENT IN A JUST TITLE TO PRODUCE ORDINARY ACQUISITIVE PRESCRIPTION.

> A title must be true and must have this condition be-

cause a title simulated or false, or a title which, as a matter of fact, does not exist, does not and cannot serve for prescription, because it is not susceptible of producing any legal effect whatsoever. For the same reason it must be valid, because acts that are void whether by lack of capacity of either the assignor or assignee, or because of their nature or conditions, cannot be the source of any right, nor can they be effective at any time; and, further, such title would not be, then, a just title.

Therefore, a title serving as a basis for prescription must have the two conditions and one as well as the other is equally indispensable because without a valid title no right can be created, and without being such as may be susceptible of legally conveying the ownership or the rights intended to prescribe, the acquisition of same cannot be attained."

As may be seen from the preceding citation, prescription in the year 1882, under Laws 9 and 14 of Title 29 of Partida 3 required that the party in whose favor such prescription was running should have a title capable of conveying ownership and Stefani never had it, because the deed of ownership of the parcel of forty cuerdas of land referred to in the private document so repeatedly mentioned, should have been assigned to the Charity Hospital or to the administrator thereof in settlement of the mortgage which it had on the said land. And Schulze & Company, the Bank of Porto Rico and Francisco P. Quiñones never have had a title of ownership to the said forty cuerdas of land.

In the form in which the said document is drafted it merely contains a promise to sell, which was to be carried into effect when, after the liquidation of the mortgage of the Charity Hospital, a title of ownership of the said forty cuerdas should be executed in favor of the said Hospital for the value of the mortgage and interest.

POSSESSION.

Neither Pablo Maria Stefani nor Schulze & Company, nor the Bank of Porto Rico, nor Francisco P. Quiñones have ever had material possession of the property in question.

Under paragraph 9 of the findings it is held that since 1882 the estate hereby claimed ceased to belong to the brothers Jose Salvador and Ramon Maria Suris by virtue of the sale set forth in the private contract and that ever since that time it has been possessed publicly, quietly and peacefully by the said Stefani, as the owner thereof, and thereafter by Schulze & Company, the Bank of Porto Rico and, lastly, by Mr. Quiñones among parties present, in good faith and under title of purchase; but it is not held that Schulze & Company, the Bank of Porto Rico and Francisco P. Quiñones, have any title of conveyance of the said forty cuerdas of land in their favor, duly describing the said property, and for that reason the said paragraph 9 of the find-

ings does not in any manner affect the right of the plaintiff and appellant. The said private document, which is the only title mentioned in the said paragraph 9 of the findings, may be good enough for the purpose of conveying the ownership of the forty cuerdas of land, by the brothers Suris to Pablo Maria Stefani, but it can never be good enough for the purpose of conveyance by the brother Suris to Schulze & Company, the Bank of Porto Rico and Francisco P. Quiñones, because it does not appear from the text thereof that the sale was made to all these persons and, furthermore, it does not appear from that particular paragraph of the findings, nor from any other, nor does it appear in the opinion that the ownership of the said forty cuerdas of land has ever been conveyed under any title whatsoever by Stefani or by his heirs to Schulze & Company, nor by the latter to the Bank of Porto Rico, nor by the Bank to Francisco P. Quiñones.

But, as the assignment by Surís brothers to Pablo Stéfani, supposing there was any, was not made under a public document, the said forty cuerdas could not be deemed to have been delivered from that moment, and this being a question of an assignment or conveyance under a private document, the land could only be understood to be in possession of the purchaser when the vendor should have placed him in possession thereof, a thing which does not appear in the findings. The following doctrine is applicable to this principle:

> A thing sold shall be considered as delivered, when it is placed in the hands and possession of the vendee.
>
> When the sale should be made by means of a public instrument, the execution thereof shall be equivalent to the delivery of the thing which is the object of the contract, if in said instrument the contrary does not appear or may be clearly inferred.
>
> Section 1462 of the Repealed Spanish Civil Code.
>
> Section 1365 of the Civil Code in force in Porto Rico.
>
> The same as the old law.
>
> The vendor shall not be bound to deliver the thing sold, if the vendee should not have paid the price, or if a period for the payment has not been fixed in the contract.
>
> Section 1466 of the Repealed Spanish Civil Code.
>
> Section 1369 of the Civil Code in force in Porto Rico.

INTERRUPTION OF POSSESSION.

Pursuant to section 1842 of the Civil Code of Porto Rico, possession in the capacity of an owner must be uninterrupted and

it does not appear in the findings that it was not interrupted, which is an indispensable requirement for prescription, as the possessor might have lost his possession through any of the causes provided in Section 462 of the Civil Code, which reads as follows:

> A possessor may lose possession:
>
> 1.—By abandonment of the thing.
>
> 2.—By an assignment made to another person, either for a valuable consideration or by a deed of gift.
>
> 3.—By the destruction or total loss of the thing, or because the same becomes unmarketable.
>
> 4.—By the possession of another person, even against the will of the former possessor, if the new possession has lasted longer than a year.
>
> The title for prescription must be true and valid.
>
> Section 1915 Repealed Spanish Civil Code.
> Section 1854 Civil Code in force in Porto Rico.

In paragraph 7 of the findings the private document hereinbefore referred to is accepted as authentic, namely,—that it is signed by the Surís brothers; but it is not said whether it was true and valid.

An authentic document may not be valid by the lack of capacity of any of the contracting parties, as happens in the present case in which the Surís brothers were disqualified for conveying their property as they were under bankruptcy proceedings, and said document may not be valid also because it was false or simulated; and not appearing from the findings that the said private document is a document true and valid, it is clear that it is not sufficient for the purposes of prescription.

A DEED WHICH IS SIMPLY CALLED DEED OF PURCHASE IS INSUFFICIENT FOR PURPOSES OF PRESCRIPTION.

If it could be considered that the possession of Stefani was because the said private document contains a sale made in his favor by the Surís brothers, of the forty cuerdas involved in this suit, it could never be estimated or considered that the possession of Schulze & Company, of the Bank of Porto Rico and of Francisco P. Quiñones is by virtue of purchase, because neither under the aforesaid paragraph 9, nor under any other paragraph of the findings does it appear that these gentlemen did acquire the property by purchase from any person whatsoever, under title of ownership of the said forty cuerdas.

Again, even supposing that these gentlemen had a sale, a title

of purchase in their favor, if such title was not true and valid it is not sufficient for acquisition by ordinary prescription of ten and twenty years. In order that a title may be deemed to be a true and valid title, it must be qualified by these same words or at least be called a just title, because the latter words embody the two requirements of *true and valid*.

By being called simply a title of purchase, it does not appear that the possession in the capacity of owner is under *just title* as required by law.

> For ordinary prescriptions the requirement of a just title is necessary among other requirements.
>
> Decisions of the Supreme Court of Spain of October 29, 1864, No. 323, Vol. 10 Page 286. October 30, 1865, No. 368, Vol. 12, Page 247. January 19, 1856, No. 22, Vol. 13, page 61. January 24, 1866, Vol. 13, page 82, No. 30. June 27, 1866, No. 280, Vol. 14, Folio 295.

11TH ERROR.

THE SUPREME COURT OF PORTO RICO ERRED IN HOLDING JUAN SURIS CARDONA NOT TO BE THIRD PARTY (TERCERO) WITHIN THE MEANING OF THE MORTGAGE LAW OF PORTO RICO WITH RESPECT TO THE TITLES OF THE LANDS IN CONTROVERSY.

> For the purpose of this law, a third person shall be considered one who has not been a party to the recorded instrument or contract.
>
> Section 27 of the Mortgage Law.

In the private document of February 9, 1882, executed by and between the Surís brothers and Pablo Stefani, the plaintiff and appellant, Surís Cardona, did not intervene in any manner whatsoever and therefore he must be considered as a third person, as regards the persons that did intervene in the said private document.

Messrs. Galindo and Escosura, Spanish commentarians of the Mortgage Law, in Volume 2 page 300 of their Commentaries, state the opinion that the notary and the witnesses intervening in a contract, should be held to be third persons, notwithstanding their intervention and that a third person is also any person who has a contract recorded, as regards another who has not fulfilled that requirement.

And on page 304 of the same volume there is the following commentary:

> "The bad faith of the witness who purchases from

whom he knows is not the owner, is not protected thereby; but punishment is inflicted for the negligence of the person who being afraid to do it by merely recording his right, failed to do so. For the purpose of the Mortgage Law there is no owner other than that appearing in the registry; whoever purchases from him, purchases well, although it appears that the person selling is not the owner; one may commit a sin but not an act prohibited by the law. That it is not true either that the notary or the witness purchasing the property that was sold before them to another are purchasing from whom they know is not the owner. What they know is that the purchaser has a personal action against the vendor, but that he has not acquired the irrevocable ownership until the same is recorded. He need not inquire why the purchaser has not recorded his title, nor why the vendor is again conveying the property. If the vendor is still the owner, he is purchasing from the owner. He has not prejudiced the personal action of the first purchaser; in the same manner when the registry did not exist the person purchasing and taking possession won from the person who had purchased and had not taken possession, and the fact that he knew or did not know of the first sale did not prejudice or favor him at all.

That if under the law there is a lack of good faith and that such lack of good faith is tantamount to crime, and the nullity of the contract is declared, let him be punished if deemed advisable, but as long as he does not do it, deeds cannot be deprived of producing their natural effects.

That if lack of good faith should be deemed to be a barrier to be considered as a third person, then the precept must be general and be made extensive to all persons knowing that the sale had been made in favor of another.»

The causes serving as a basis to the Supreme Court for denying to the plaintiff the standing of third person are quite untenable as they spring forth not from the result of the evidence but from mere deductions and presumptions which cannot in any manner affect the character of a third person on the part of the plaintiff, to which he is entitled under the provisions of the section of the Mortgage Law hereinabove cited. Such causes are that the plaintiff was on good terms with his father, José Salvador Surís, according to the testimony of the latter; that he has no capital but that he owns property and that formerly he had a house which he built, as testified to by the father of the plaintiff.

When a father and son are on good terms and live in the same town it is easier for them to enter into a contract, for if they are not friends and live in different towns it would be very difficult for them to contract with each other.

Furthermore, the acquisition of the property under litigation made by Juan Surís Cardona, was not objected to by the defendants

on the ground that it was either false or simulated.

In paragraph No. 10 of the findings it is affirmed that the plaintiff and appellant, when he purchased the property that he claims, knew the history thereof as before related, but is does not state that the plaintiff and appellant had knowledge of the said private document and of the terms in which it was drafted. And under such conditions such document does not affect in the least the right of the plaintiff and appellant, not only because no sale was made, but also because in the case of

Todd vs. Romeu, 217 U. S. 150

the Supreme Court of the United States held that:

Any purchaser of real property from a person appearing as the owner thereof in the registry, should be deemed to be a third person with all the consequences of such conditions, notwithstanding the most complete and absolute knowledge of any transfer that has not been recorded or of other facts not clearly stated in the registry".

The history known by the plaintiff and appellant of the "Perseguida" estate is that appearing in the registry of property, and it was by that history that he should have governed himself to purchase it from José Salvador Surís and from the heirs of Ramón María Surís, as with regard to real property, the only thing true is what appears in the registry of property. And so much so that the Supreme Court of Porto Rico does so state in a paragraph of the opinion (Page 29 of the transcript of the record) reading as follows:

> "Such is the history of the estate "Perseguida" of 40 acres of land according to the registry of property, and the plaintiff, availing himself of the same, brought an action for recovery against Francisco Plácido Quiñones claiming also the revenues of the estate in order that the latter might be restored to him together with said revenues; and the Bank of Porto Rico answered in this action on account of having been summoned by the defendant for the purpose of eviction".

In the same paragraph Nº. 10 of the findings it is affirmed that the plaintiff knew that the "Perseguida" estate was not possessed by his father José Salvador Surís and his cousins since the year 1882, but it is not affirmed that the plaintiff knew the causes of their losing possession thereof.

The property rights in and to the forty cuerdas in liquidation, acquired by the plaintiff and appellant under the protection of the Mortgage Law and of the Registry of Property cannot be prejudiced in any manner by the aforesaid private document as it has no value whatever with regard to the plaintiff, pursuant to the provisions of Section 1225 and 1292 of the Civil Code hereinbefore cited.

and of paragraph 2 of Section 34 of the Mortgage Law which reads as follows:

> "Only by virtue of a recorded instrument may another later instrument, also recorded, be invalidated to the prejudice of a third person, with the exceptions mentioned in article 389."

12TH ERROR.

THE SUPREME COURT OF PORTO RICO ERRED IN NOT REVOKING THE JUDGMENT OF THE DISTRICT COURT OF MAYAGUEZ AND IN NOT ORDERING THE DELIVERY TO THE PLAINTIFF OF THE POSSESSION OF THE LANDS IN CONTROVERSY, AND THE PAYMENT TO THE PLAINTIFF OF THE VALUE OF THE FRUITS WHICH SAID LANDS HAVE PRODUCED FROM THE DATE OF THE PRESENTATION OF THE COMPLAINT TO THE DATE OF SAID DELIVERY OF POSSESSION.

As in the record transmitted from the District Court of Mayaguez to the Supreme Court of Porto Rico there are sufficient documents showing the right of the plaintiff and appellant to the recovery prayed for, the said Supreme Court of Porto Rico should have rendered judgment in accordance with the prayer of the said plaintiff and appellant.

13TH ERROR.

THE SUPREME COURT OF PORTO RICO ERRED IN HOLDING THAT PABLO MARIA STEFANI INSCRIBED THE LANDS IN CONTROVERSY IN HIS NAME IN THE REGISTRY OF PROPERTY.

We must make an important explanation as to this error, for the purposes of the allegation that we shall make hereinafter in support of said error.

And such explanation is that the Supreme Court of Porto Rico has not held in the findings that Pablo María Stefani did record the lands in dispute in the Registry of Property, in his name.

The only thing that the court held in paragraph 4 of the findings is that in the instrument of consolidation executed by Schulze & Company in the year 1889 of several parcels of land under the name of plantation "Imiza", the "Perseguida" or "Hospital" estate of forty cuerdas of land was included therein; but that does not effect the right of the plaintiff and appellant because in the said paragraph No. 4 it is not held that the forty cuerdas of land are included in the consolidation that was made of the plantation

"Imiza" because Schulze & Company, makers of such consolidation, had acquired a title of ownership of the same.

A grouping or consolidation of properties is an operation exclusively of the Registry, which does not give nor take away rights in and to the properties consolidated, nor does it increase or decrease the area thereof. It has for its sole purpose to reduce to one single estate and to record under one single number several properties that are recorded under different numbers in the name of one single person.

It is so clearly stated by the sections of the Regulations for Execution of the Mortgage Law, which we shall proceed to transcribe:

> When two estates are joined to form a single estate, the latter shall be recorded under a new number, a mention thereof being made in the margin of each of the previous records relating to the ownership of the estates combined. Reference shall also be made in the new record to the old records, as well as to the charges which previously encumbered the estates joined.
>
> Section 60, paragraph 2, Regulations Mortgage Law.

If the estate of forty cuerdas involved in this suit had been grouped or consolidated with another or others to form one single estate under the name or plantation "Imiza" it is clear that the entry in the Registry of the said forty cuerdas would have been cancelled because such estate of forty cuerdas would have passed to be a part of another estate under a different number.

> The following shall be recorded under a single number, if the persons interested should so request, being considered a single estate, in accordance with article 8 of the law and for the purposes therein stated:
>
> Adjoining tracts of land belonging to the same person, or to a number of persons pro indiviso, even though they contain no place of shelter whatsoever and their origin is not identical, and even though they shall have come into the possession of the last holder from different sources.
>
> Section 61, paragraph 4, of the Regulations of the Mortgage Law.

Messrs. Galindo and Escosura, commentarians of the Mortgage Law, on page 35, Volume 2 of their Commentaries, state as follows:

> The entry as one single estate of two or more estates previously and independently recorded, must be made on separate pages, giving to the new estate the number thereunto belonging as if recorded for the first time, and

at the margin of each previous entry, relative to the ownership of the estates that are being grouped or consolidated, a note shall be written stating such consolidation, care being taken to make reference thereto in the new entry, and of mentioning such liens on the estates now consolidated as may appear of record.

Section 24 of the Regulations for the Execution of the Mortgage Law.

From the preceding quotations it may be clearly seen that in order for two or more estates to be grouped together under a single number, all of them must belong to the same owner, and must be duly recorded in the Registry of Property. And as it does not appear from the findings that the aforesaid forty cuerdas of land were the property of Schulze & Company nor that they were recorded in the name of this firm in the Registry of Property at the time of the execution of the instrument of consolidation of the several parcels of land comprising the plantation «Imiza» in the year 1889, but to the contrary it appearing in paragraph 3 of the findings (Page 50 of the transcript of the record) that they were recorded in the name of the Surís brothers, at the time of the aforesaid consolidation made by Schulze & Company, it is evident that they could not be consolidated with the parcels of the plantation «Imiza.»

Moreover, in the hypothesis that in the consolidation made by Schulze & Company of the plantation «Imiza» in the year 1889, the forty cuerdas of land of the estate «Perseguida» or «Hospital» had been included, it does not appear from the findings that such consolidation was recorded in the Registry of Property and as such consolidation has not been recorded in the name of Schulze & Company, the said estate of forty cuerdas could not have been recorded either.

The consolidation or grouping made by Schulze & Company of the parcels of the plantation «Imiza» in their titles, has nothing to do with the «Perseguida» or «Charity Hospital» estate in its titles, which legally was not and could not have been consolidated. It is true that the said forty cuerdas of land are enclosed within the plantation «Imiza», but this does not mean to say that they are the property of the defendant and appellee Quiñones or that he possesses them legally.

A person might be in possession of a rural estate, the ownership of which may be vested in another person; and such estate so possessed may be isolated or enclosed within another estate belonging to the deforciant, but this will not be a barrier for the owner to recover the property from the person in possession, wherever such a property shall be found.

And so much so that Section 286 of the Code of Civil Procedure in force in Porto Rico, permits the survey of real property belonging to any person for the purpose of investigating as to whether or not the property, the recovery of which is sought, is enclosed therein. Something analogous to this was done in this case, as Mr.

Carlos Tomassot, an engineer, made a survey of the plantation "Imiza", and proved that the said forty cuerdas of land are enclosed within it (Page 35 of the record)".

The fact appearing as proven in paragraph 8 of the findings, does not affect the plaintiff at all, because what was registered by defendant Quiñones in the Registry before the plaintiff and appellant Surís Cardona had recorded the sale of the forty cuerdas of land made to him by his father José Salvador Surís and by the children and heirs of Ramón María Surís, was the plantation "Imiza" purchased from the Bank of Porto Rico, which, as hereinbefore shown, is one thing and the "Perseguida" estate is another thing, each by their respective titles.

If Francisco P. Quiñones purchased the plantation "Imiza", on the nineteenth of November, 1906, it is clear that he recorded the same after that date; if, upon recording it, the estate "Perseguida" had been recorded together therewith, in the name of Quiñones, the Registrar of Property would not have recorded a prior title to a part of the said "Perseguida" estate, such as the undivided half thereof belonging to the heirs of Ramón María Surís, who died in the year 1900, in favor of whom the said half was recorded, (Nº 6 of the findings), because it is prohibited to him by the Mortgage Law in the section which we shall now transcribe.

> After any deed conveying the ownership or the possession of real property or of property rights therein shall have been recorded, or a cautionary notice thereof entered, no other deed of the same or a prior date conveying or encumbering the ownership of the same real property or property right can be recorded or entered.
>
> Section 17 of the Mortgage Law.

The Surís brothers having 17 parcels of land recorded in their name, consolidated the same in one single estate and recorded such consolidation, also in their name, on the fifteenth day of March, 1882, under the name of "Perseguida" (No. 3 of the findings and allegation IV of complaint, page 4 of the record].

Thereafter the heirs of Ramon María Surís recorded in their name the undivided half thereof, and lastly, the plaintiff and appellant recorded it in his favor, and as a whole, in the year 1907 by purchase which he made from José Salvador Surís and from the heirs of Ramon Maria Surís (No. 6 of the findings).

Therefore, it is undeniable that the property of forty cuerdas of land is entirely independent from the plantation «Imiza», though enclosed within it, which is precisely the cause for the filing of this suit, as it has been alleged in the complaint (Page 10 of the record), that the defendant, Francisco P. Quiñones, is in possession thereof unlawfully, without any title thereto and enclosed within the lands of the plantation «Imiza».

For Francisco P. Quiñones recording in his name the estate of forty cuerdas of land in litigation, said land must have been previously recorded, pursuant to section 20 of the Mortgage Law here-

inafter transcribed, in the name of Pablo María Stefani, who is said to be the purchaser thereof from the Surís brothers; afterwards, in the name of the Succession of Stefani; then again in the name of Schulze & Company, which is said to be the purchaser from Stefani or from his Succession, and lastly, in the name of the Bank of Porto Rico, which is said to be the purchaser from Schulze & Company, and nothing of this appears from the findings or from the opinion of the Supreme Court of Porto Rico. The following section 20 of the Mortgage Law is applicable to this:

> In order to permit of the record or entry of deeds conveying or encumbering the ownership or possession of real property or property rights, the interest of the person executing it or of the person in whose name the conveyance or encumbrance is made must first appear of record.

On the other hand, under the supposition that the said forty cuerdas of land had been recorded in the name of Quiñones, it does not appear whether the ownership or the possession thereof was recorded, for in case of the recording of possession, it would be without prejudice to a third person with a better title, pursuant to the provisions of paragraph 3 of section 34 and section 392 of the Mortgage Law. The plaintiff and appellant herein is a third person who has of record, the ownership of the lands in litigation; and there is no record of the volume and page in the Registry where the recording of said lands has been made in the name of Schulze & Company or in the name of the Bank of Porto Rico or in the name of Quiñones.

It must be borne in mind that the defendant Francisco P. Quiñones did not allege in his answer that he is the owner of the said forty cuerdas of land, and the warrantor, the Bank of Porto Rico, did not make any such allegation; and that neither of the two alleged that the land in question is not the property of the plaintiff and appellant, nor that the said land was consolidated with several other parcels of the plantation "Imiza" under the instrument of consolidation executed by Schulze & Company, nor that in the said consolidation the said land was recorded in the name of the said Schulze & Company.

Quiñones limited himself to deny the allegations of the complaint and as a new matter alleged that the "Perseguida" estate does not exist and that it is imaginary; and the Bank limited itself to deny all the allegations of the complaint.

Neither one or the other alleged that they had acquired the ownership of the "Perseguida" estate under title of conveyance; and Quiñones, in all the allegations of his new matter refers to the titles of the plantation "Imiza", with which the complaint has nothing to do whatever.

And supposing that the "Perseguida" estate had been consolidated with the plantation "Imiza" and that by said consolidation it was recorded in the name of Schulze & Company in the Registry of Property, then we would have two registrations of the "Perse-

guida" estate, one of which is of the ownership (dominion) in favor of Juan Surís Cardona, the source of which is the first registration of ownership of the estate in the name of Surís brothers, made on the fifteenth day of March, 1882, on page 20 of Vol. 2 of San Germán Property Number 90 (Page 4 of the record), and another one in favor of Schulze & Company, by virtue of consolidation, the source of which is not known, because it does not appear in the findings nor in the opinion, whether or not the ownership or the possession of the estate was recorded with the consolidation, and the volume and page where it was recorded; and, as there cannot be two valid entries of registration in favor of different owners, as to the same property, because it is prohibited by the Mortgage Law, there is no doubt that preference must be given to the record of the plaintiff and appellant, as it is an entry of ownership and it is the oldest entry, and because it is made by virtue of a title conveying the ownership of the said estate, as appears from the findings, while the entry of registration had by Schulze & Company, by virtue of the consolidation, does not appear to be based on any title conveying to them the ownership of the consolidated property.

There is a most important point which is the most convincing demonstration that the "Perseguida" estate was not consolidated with parcels of the plantation "Imiza", which is the following:

The Supreme Court sets forth in its opinion, (page 34 of the record) that Schulze & Company in the instrument of May 5, 1889, grouping together several parcels of the plantation "Imiza", stated that "A parcel of twenty cuerdas in the ward of Sabana Eneas is bounded on the south by lands of the Charity Hospital and that another parcel of 34.900 cuerdas is bounded on the west by lands of the Charity Hospital also.

Therefore, if Schulze & Company do state in that instrument that two of the parcels of land, object of the aforesaid consolidation, are bounded by the Charity Hospital, it is clear that Schulze & Company acknowledge that the lands called "Charity Hospital lands" do not belong to them, and it is evident that under such conditions Schulze & Company should not consolidate the forty cuerdas of land with the several parcels of the plantation "Imiza" because they have no title thereto in their name and duly recorded in the Registry.

And if in stating the boundaries of the estate as a whole, already consolidated, Schulze & Company omitted the boundary of the Charity Hospital, then Schulze & Company committed a fraud, which should not prevail to the prejudice of the rights of the plaintiff and appellant.

It does not appear from the findings that in the instrument of consolidation executed by Schulze & Company, the brothers Suris, who at that time had the "Perseguida" estate recorded in their name in the Registry of Property, had any intervention in the said instrument of consolidation; and if it is to be accepted that Schulze & Company did procure the registration of the "Perseguida" estate because of the consolidation thereof by that firm with the parcels of the plantation "Imiza", it would be a very easy matter for any person acting in bad faith to execute an instrument of consolid-

ation, enclosing therein lands of one or of several of his abbutting owners, unknown to the latter, and then appropriate such lands to himself, by virtue of such illegal and fraudulent consolidation, thus despoiling the abbutting property owners of what lawfully belongs to them.

The brothers Pedro, Gerardo, Jesús María and Cresencia Merly executed a public instrument of consolidation of four parcels to them belonging and a copy thereof was filed by them in the Registry of Property of Guayama, for the purpose of having the consolidated parcels recorded under a single number and as a single estate, and the registrar refused to register on the ground that the parcels, the consolidation of which was being sought, were not recorded in the name of the parties to the instrument.

An appeal from the decision of the Registrar having been taken to the Supreme Court of Porto Rico, the court, under a decision dated April 13, 1915, number 204, affirmed the decision of the Registrar without prejudice to the interested parties applying to the Registry for the purpose of recording the ownership of each of the four parcels consolidated, in favor of the heirs in common and undivided, as a necessary basis to obtain the recording of the consolidation.

Where a property owner lacks a written title of ownership he may show his possession of the property, availing himself of the right unto him granted under Section 390 of the Mortgage Law, the proceedings being subject to the provisions of Section 391 of said Law. And it does not appear from the findings that Schulze & Company, who have no title of ownership in their favor, of the «Perseguida» estate, did ever institute possessory proceedings for the purpose of showing that they were in possession of it as owners thereof.

The plaintiff and appellant has fulfilled each and every requirement of the laws of Porto Rico for the recovery of real property, which is shown from the following doctrine of law.

> A plaintiff claiming in an action of ejectment the full ownership of an estate and designating the possessors thereof, and producing the title under which he acquired the property, has fulfilled the requirements of Law 25, Title 2, Partida 3.
>
> Decisions of the Supreme Court of Spain of
> No. 121, May 1, 1867, Vol. 15, Page 438.
> No. 527, December 30, 1881, Vol. 47, Page 815.
> No. 87, March 14, 1882, Vol. 48, Page 437.
> No. 124, March 31, 1865, Vol. 11, Page 422.
> No. 204, May 18, 1866, Vol. 13, Page 334.
> No. 453, December 7, 1866, Vol. 14, Page 766.
> No. 164, June 3, 1867, Vol. 15, Page 587.
> No. 93, April 4, 1868, Vol. 17, Page 300.
> No. 285, Nov. 5, 1869, Vol. 20, Page 504.

No. 360, December 7, 1861, Vol. 24. Page 701.
No. 22, December 31, 1875, Vol. 33, Page 88.
No. 141, April 28, 1883, Vol. 52. Page 32.
No. 419, November 21, 1885, Vol. 58, Page 769.
No. 542, April 6, 1847, Vol. 61, Page 121.
No. 223, June 14, 1889, Vol. 65, Page 867.

Successfully to prosecute an action of ejectment, the plaintiff should fix precisely and clearly the thing claimed and fully prove not only the ownership of the same but also the identity thereof.

The title serving as a basis to every action of ejectment, should be a true title to the things which are the object of such action.

Verges et al vs Pietri et al.

Decision of the Supreme Court of Porto Rico Page 20, Vol. 16.

For the purpose of prosecuting an action of ejectment it is necessary for the plaintiff to allege and prove his true title to the property claimed, superior to the title that the defendant may have.

Elzaburu vs. Chaves et al

Decision of the Supreme Court of Porto Rico Page 172, Vol. 19.

Civil Code of Porto Rico:

Section 354. Ownership is the right by which a thing belongs to some one in particular, to the exclusion of all other persons.

Ownership confers the right to enjoy and dispose of things without further limitation than those established by law.

The owner holds a right of action against the holder and the possessor of the thing in order to recover it.

Section 355. No person shall be deprived of his ownership, except it be by a competent authority and for a justified purpose of public utility, and after having been properly indemnified.

If this requirement has not first been complied with, the district courts shall protect and, in proper cases, replace the owner in possession of the expropriated property.

The indemnification shall comprise, not only the value

of the thing whereof the owner is deprived, but also a compensation for any damages and injuries which may be caused him by the deprivation of the property.

Section 356. The ownership of a thing is vested in him who has the immediate dominion thereof, and not in any other person, notwithstanding the fact that he uses or enjoys in some manner the thing belonging to another.

A casual examination of the plans attached to the transcript of the record will be sufficient to give a clear idea as to the manner in which Schulze & Company enclosed the "Perseguida" estate within the plantation "Imiza".

On the plan of the plantation "Cristina", is seen, marked by Number 3, the parcel of land called "Charity Hospital" bounded by the road leading to San Germán and by parcels 2 and 11. These were the parcels purchased by Pablo Maria Stefani from the Surís brothers under instrument of January, 1883.

Later on, when Schulze & Company purchased other lands on the other side of the road, they made a plan of the plantation "Imiza" upon which the said road is also clearly seen; and instead of showing on this plan the portion of forty cuerdas of land of the hospital, in the manner in which a portion of the church is shown, they on that plan enclose the "Perseguida" estate, which did not not belong to them and by such fraudulent means they enclose unlawfully, within the plantation "Imiza", the estate of forty cuerdas so often mentioned hereir.

The Supreme Court of the United States in the case of Rosaly vs. Graham Frazer, 227, U. S. 584, 590, states as follows:

> An examination of the "statement of facts and bill of exceptions" shows that it contains nothing that could, by any stretch of construction be deemed a finding of facts in the nature of a special verdict. In the absence of such findings there is nothing for us to review except the rulings upon evidence, and, in the absence of error in those rulings, the judgment must be affirmed.
>
> But since the judgment record itself disclosed that the opinion delivered by Mr. Justice del Toro was made a part of the judgment, we may, for present purposes, 591)" accept the statement of facts contained in the opinion in lieu of more formal findings.

The opinion in this case upon which the Supreme Court of Porto Rico bases its judgment is in complete contradiction with the statement of facts by way of a special verdict made by that court; and if this Honorable Court finds that the statement of facts by way of a special verdict of the Supreme Court of Porto Rico is informal, this court may accept the statement of facts contained in the said opinion, which has been made a part of the judgment.

Recapitulating the allegations herein made, we will say.

A.— That the ownership of a rural estate of forty cuerdas of land known as "Perseguida" or "Charity Hospital", situate in the wards of Sabana Eneas and Sabana Grande of San German, was recorded in the Registry of Property of San German in the name of the brothers Jose Salvador and Ramon Maria Suris, by virtue of purchases made by them under public instrument from different persons about the years 1860 to 1870. (No. 1 of the findings).

B.—That because of the death of Ramón María Surís the undivided half of the said estate was recorded in the name of his heirs, and that later on the entire estate was sold by José Salvador Surís and the heirs of Ramón María Surís to Juan Surís Cardona, plaintiff and appellant herein, by whom it was recorded in his name in the Registry of Property. (No. 6 of the findings)

C.—That the entry of registration of the said property in the name of the said plaintiff and appellant has not been cancelled.

D.—That the said forty cuerdas of land are enclosed within the plantation «Imiza» which is the property of Francisco P. Quiñones, and in his possession.

E.—That it does not appear from the findings that the title of ownership of the said forty cuerdas of land has ever been assigned by Pablo María Stefani or his heirs to Schulze & Company, nor by this latter to the Bank of Porto Rico, nor by the Bank to Francisco P. Quiñones.

F.—That it does not appear from the findings that the instrument of consolidation executed in the year 1889, by Schulze & Company, of the several parcels of the plantation "Imiza", was recorded in the Registry of Property.

G.—That it does not appear from the findings that Pablo María Stefani, nor his heirs, ever recorded in his name and in the Registry of Property the said forty cuerdas of land, nor were they so recorded by Schulze & Company, the Bank of Porto Rico or Francisco P. Quiñones.

We finally allege that the only basis that the Supreme Court of Porto Rico has had for the rendition of judgment against the plaintiff and appellant is that the defendants and appellees have acquired the ownership of the property herein claimed by ordinary prescription, as may be seen from the following paragraph appearing in the opinion on Page 41 of the record, and which reads as follows:

> This doctrine is correct, but the fact that the lower court has rendered judment against the plaintiff does not necessarily lead to the conclusion that it has failed to apply said doctrine, inasmuch as said court may have held that Juan Suris Cardona had purchased the property to which his title referred and that, nevertheless, there

may have been some legal ground on account of which he was prevented from recovering the same as, for instance, if the defendant Quiñones had acquired said property by prescription in view of other evidence introduced at the trial.

Wherefore, there being no such prescription, we respectfully urge that the judgment of the Supreme Court of Porto Rico be reversed, and pray for such other and further relief as this Honorable Court may deem meet.

Respectfully submitted,

JOSÉ R. F. SAVAGE.
FERNANDO VÁZQUEZ.
Attorneys for appellant.

Received copy of the Appellant's brief from the appellant Juan Surís Cardona.

San German, P. R., September 8, 1915.

BENITO FORÉS.
Attorney for Francisco P. Quiñones.

Received copy of the Appellant's brief this 14th. day of September, 1915.

A. SARMIENTO.
Attorney for the Bank of Porto Rico.

3

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1915.

No. 185.

JUAN SURIS CARDONA, Appellant,

vs.

FRANCISCO P. QUIÑONES

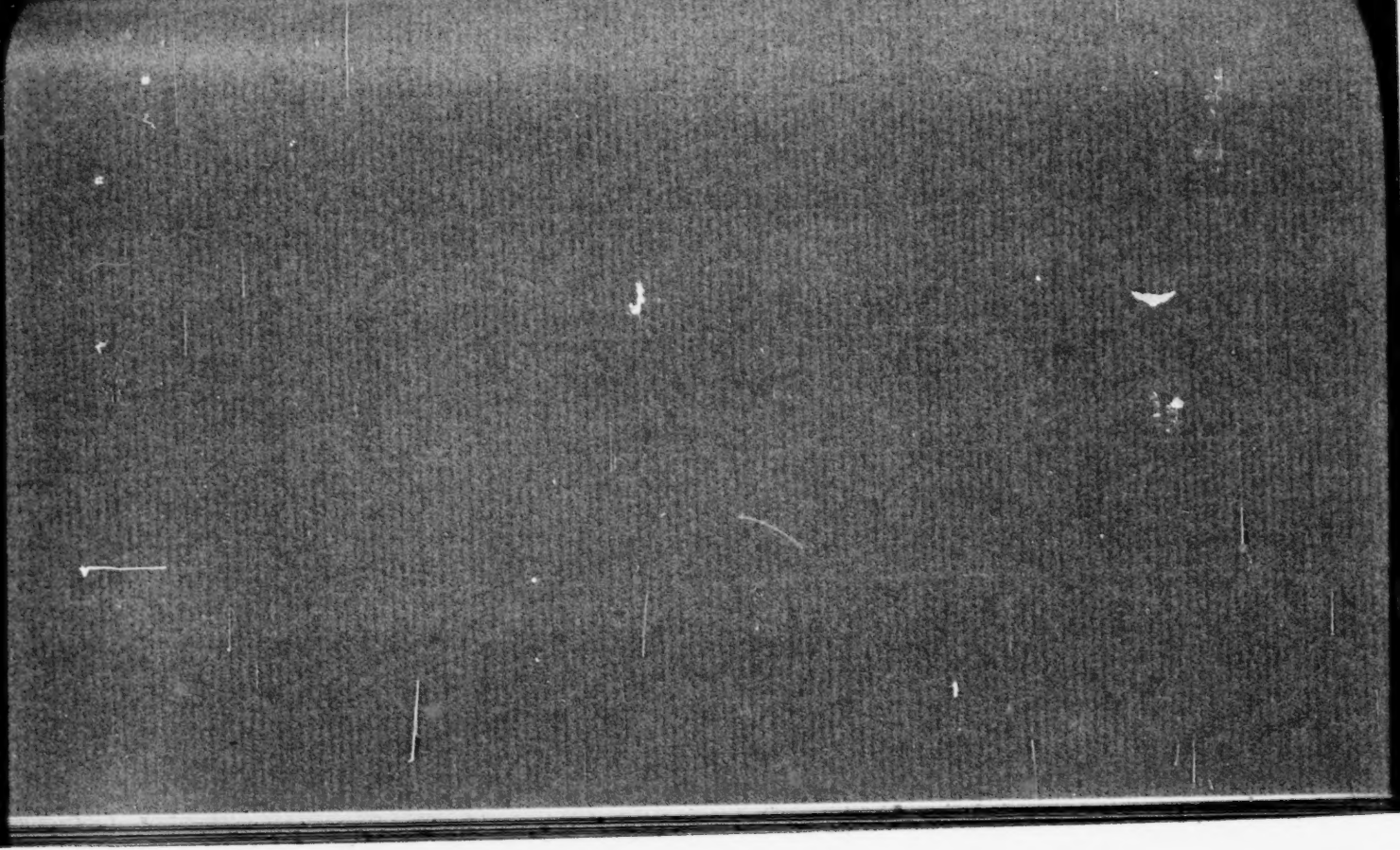
AND

EL BANCO DE PUERTO RICO, Appellees.

APPEAL FROM THE SUPREME COURT OF PORTO RICO.

MOTION OF APPELLEES TO DISMISS APPEAL.

FRANCIS E. DEITZ, Counsel for Appellees.



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APPEAL FROM THE SUPREME COURT OF PORTO RICO.

INDEX.

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EL BANCO DE PUERTO RICO, Appellees.

APPEAL FROM THE SUPREME COURT OF PORTO RICO.

MOTION OF APPELLEES TO DISMISS APPEAL.

To the Honorable,
The Supreme Court of the United States:

Appellees herein respectfully submit, in support of their motion to dismiss the appeal herein, the following:

The judgment which it is sought to have reviewed by this Court was rendered by the Supreme Court of Porto Rico on May 25, 1911, (page 20, printed Record.)

The petition for appeal was filed in the Court below on May 25, 1911, (page 46, printed Record.)

An Order was made on May 26, 1913, granting the appeal, fixing the amount of bond for costs and damages, allowing sixty days for the preparation of the Record and the filing thereof in the United States Supreme Court, and providing for the submission by Appellant of a draft of a Statement of Facts in the form of a special verdict, (page 55, printed Record.)

Appellant did not file bond for damages and costs until some days after August 2, 1913, and the same was not approved by the Court below until September 8, 1913, (page 52, printed Record.)

The Statement of Facts in the nature of a special verdict was not filed in the Court below until February 6, 1914, (page 49, printed Record.)

Affidavit for the purpose of showing the amount involved in the appeal in order to obtain the jurisdiction of the Supreme Court of the United States, in accordance with Section 244 of the Judicial Code, was not filed until February 14, 1914, (page 52, printed Record.)

A citation was not issued until May 21, 1914, (page 56, printed Record.)

It is, therefore, apparent that although a petition for the allowance of an appeal was presented within the two-year period allowed by Section 1008 of the Revised Statutes of the United States within which to take appeals from District Courts to the Supreme Court of the United States, nothing was done within the said period of two years to secure the effective allowance of an appeal and to give the Supreme Court of the United States jurisdiction to review the judgment in this cause.

Furthermore, the transcript of the Record was not filed in the Office of the Clerk of the Supreme Court of the United States until long after the expiration of the years allowed by the statute.

Appellees, therefore, respectfully submit that this Court has not obtained jurisdiction of the said appeal, and that the same should be dismissed.

Section 1008, Revised Statutes, United States.

Sage vs. Iowa Cen. R. R. Co.,	96 U. S., 712.
Draper vs. Davis,	102 U. S., 370.
Brandies vs. Cochrane,	105 U. S., 262.
Brown vs. McConnell,	124 U. S., 489.
Scarborough vs. Pargoud,	108 U. S., 567.
Green vs. Elbert,	137 U. S., 615.
Killian vs. Clarke,	111 U. S., 784.

San Juan, Puerto Rico,
December 17, 1915.

FRANCIS H. DEXTER,
Attorney for Appellees.

Copy of
Service of foregoing motion acknowledged this
17th day of December, 1916.

J. R. F. SAVAGE,
Attorney for Appellant.

SUPREME COURT OF THE UNITED STATES

OCTOBER, TERM, 1915

No. 185.

JUAN SURIS CARDONA, Appellant,

vs.

FRANCISCO P. QUIÑONES

and

EL BANCO DE PUERTO RICO, Appellees.

APPEAL FROM THE SUPREME COURT OF PUERTO RICO.

MOTION AND BRIEF OF APPELLANT IN OPPOSITION TO THE MOTION OF APPELLEES TO DISMISS THE APPEAL.

JOSE B. F. SAVAGE, Attorney for Appellant.

SUPREME COURT OF THE UNITED STATES

OCTOBER, TERM, 1915.

No. 185.

JUAN SURIS CARDONA, Appellant,

vs.

FRANCISCO P. QUIÑONES

and

EL BANCO DE PUERTO RICO, Appellees.

APPEAL FROM THE SUPREME COURT OF PORTO RICO.

BRIEF AND ARGUMENT OF APPELLANT IN OPPOSITION TO THE MOTION OF APPELLEES TO DISMISS THE APPEAL.

JOSÉ R. F. SAVAGE, Attorney for Appellant.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1915.

No. 185.

JUAN SURIS CARDONA, Appellant,

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FRANCISCO P. QUIÑONES

and

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APPEAL FROM THE SUPREME COURT OF PORTO RICO.

BRIEF AND ARGUMENT OF APPELLANT IN OPPOSITION TO THE MOTION OF APPELLEES TO DISMISS THE APPEAL.

The motion of the Appellees to dismiss the appeal herein is, in the first place, defective, because no notice of the hearing of this motion has been given to the Appellant as required by paragraph 4 of Rule 6 of this Court. Nothing but a copy of the motion has been served, but no date for the submission thereof has been fixed, and no notice of the submission of the said motion on any day certain has been given to the Appellant as required by the said rule.

As to the merits of the motion itself, we submit that it appears to be based upon a mistaken construction of Section 1008 of the Revised Statutes of the United States. Appellees construction of this Section apparently is that an appeal must be prayed for, allowed, the bond given, the citation issued and served and the record docketed in

the Supreme Court within the term of two years from the date of the decree, or this Court will lose jurisdiction of such appeal.

Where the appeal is prayed for within the time limited by the statute, the order allowing the appeal may be entered after such time has expired, and the order will refer back to the date of the application for the allowance of the appeal.

Latham vs. U. S., 9 Wall, 145.

U. S. vs. Adams, 6 Wall. 101.

U. S. vs. Vigil, 10 Wall, 423.

The giving of the bond is not jurisdictional, and it is sufficient if it be given while the appeal is alive. It has in some cases been allowed to be filed even after a motion has been made to dismiss the appeal.

Evans vs. State National Bank, 134 U. S. 330.

Dos Hermanos, 10 Wheat, 306.

Edmonson vs. Bloomshire, 7 Wall, 306.

Neither is the citation jurisdictional; it is sufficient if the parties have thirty days notice of the hearing of the appeal.

Evans vs. State National Bank, 134 U. S. 330.

Richardson vs. Green, 130 U. S. 104.

In the case at bar, the Supreme Court of Porto Rico, by orders duly entered and filed in the office of the Clerk of the Supreme Court of the United States, as provided by paragraph 1 of Rule 9 of this Court, enlarged the time for the filing of the record herein, and the record was duly issued and mailed by the Clerk of the Supreme Court of Porto Rico to the Clerk of this Court, and was received by the latter within the time limited by the last order so entered and filed. The fact that the docket fee was not paid until a few days later,

and that, therefore, the case was not actually docketed within the time, does not affect the jurisdiction of the Court.

Richardson vs. Green, 130 U. S. 104.

WHEREFORE, it is respectfully submitted that the motion to dismiss the appeal herein should be denied.

San Juan, Porto Rico,
December 22nd, 1915.

JOSÉ R. F. SAVAGE,
Attorney for Appellant.

Service of a
Copy of the foregoing brief and argument acknowledged this 22nd day of December, 1915.

FRANCIS H. DEXTER,
Attorney for Appellees.